

(23,744)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 192.

THE NEW ORLEANS TAX PAYERS PROTECTIVE ASSO-  
CIATION ET AL., PLAINTIFFS IN ERROR,

*vs.*

THE SEWERAGE AND WATER BOARD OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a STATE OF LOUISIANA,  
Parish of Orleans, City of New Orleans:

Civil District Court for the Parish of Orleans.

No. 90127, Civil District Court, Division "A."

N. O. TAX PAYERS PROTECTIVE ASS'N & als.

VS.

SEWERAGE & WATER BOARD OF NEW ORLEANS.

*Detailed List of Docket Entries in Chronological Order.*

1909.

- June 18. Petition. Copy of petition & citation.
- 22. Motion to discontinue suit as to J. B. Meyer.
- 25. Return to citation. Exception. Motion security for costs.
- July 7. Return to notice security for costs. Bond for costs.
- Nov. 5. Motion to fix.
- 12. Return to motion to fix.
- 19. Exception submitted.
- Dec. 16. Motion to discontinue name of N. O. Tax Payers. Oyer discontinued.
- 22. Answer.

1910.

- Oct. 19. Evidence, duplicate & 1 document. Continued.
- Nov. 2. Submitted.
- 9. Evidence & deposition.
- 21. Filing one document.
- Dec. 22. Reasons for Judgment. Judgment.

1911.

- Jan'y 3. Motion for new trial.
- 25. New trial granted.
- Nov. 21. Motion to fix for trial.
- Dec. 6. Subpœna duces tecum.
- 14. Return to writ.

1912.

- Jan'y 18. Judgment.
- 24. Judgment signed.
- Feb'y 2. Motion & bond of appeal.

1 STATE OF LOUISIANA,  
*Parish of Orleans, City of New Orleans:*

Civil District Court for the Parish of Orleans.

No. 90127, Civil District Court, Division "A."

N. O. TAX PAYERS PROTECTIVE ASS'N & als.

VS.

SEWERAGE & WATER BOARD OF NEW ORLEANS.

*Petition.*

Filed June 18th, 1909.

To the Honorable the Civil District Court for the Parish of Orleans:

The joint petition of the New Orleans Tax Payers Protective Association, a corporation duly organized under the laws of Louisiana, and of the following named Tax Payers, living and residing in the City of New Orleans, to-wit: Joseph M. Elliot, M. D.

2 Robert Upshur, B. G. Carbajal, John Blank, John J. Zollinger, Jean Boubebe, Adam Ravannack, V. Hudson, I. Fernandez, John Stolzenthaler, Ernest Carl, J. Heinrich, F. Audiffred, Charles E. Ehren, J. F. Elliot, Chas. Lepley, Geo. de Reyna, John R. Howatt, P. J. Spear, P. S. Esnard, C. Kreher, J. H. Nobles, Wm. Schindler, F. R. Hottinger, Mrs. A. Fahnert, Rev. C. W. Reeves, Pascal Marchese, Mrs. J. T. Jones, Maud and Irene O'Brien, E. P. Bernet, Mrs. E. P. Bernet, Eugene Braquet, Eugene Braquet, Jr., E. H. Anderson, F. M. J. Clark, W. R. Bailey, Otto Knoop, John T. Whittaker, John Karcher, E. O. Ducros, J. B. Laplace, Miss Nisida Louque, Mrs. Charles Louque, Mrs. R. H. Burton, J. M. Druilhet, Jr., Miss Bettie Owen, John B. Meyers, Miss Isabella Simmons, Mrs. Rosine Oubre, and of such other Tax Payers who may choose to join in and paying their pro rata of costs; Respectfully represents: That your Petitioners are all tax payers in the City of New Orleans and users of water for sewerage purposes and owners of cisterns;

That in April, 1899, the Tax Payers of the City of New Orleans presented to the Mayor and City Council of New Orleans, a petition to levy upon all the property of this City, a special tax of two mills per annum for forty-three years, beginning with and including the year 1899, and for the following purposes:

1st. To acquired title by the City by construction or purchase, or both, to a system of waterworks, to the extension thereof throughout the City, inclusive of the Fifth District; and to the purification of the water supply therefrom.

2nd. To the construction throughout the City, inclusive of the Fifth District of a free sewerage system, with free water therefor; the title whereof shall be in the City";

The petition prayed that the City Council should, as soon as possible, order an election to vote upon said petition, and to obtain legis-

lative and constitutional authority to carry the same into effect.

3 Thereupon, the City Council by Ordinance 15214 C. S. approved April 26th, 1899, ordered that a special election be held as provided in Article 232 of the Constitution of this State and Act 131 of 1898, for the purpose of submitting to the property Tax Payers of the City of New Orleans, entitled to vote at such election the proposition to levy on all the property in the City of New Orleans, the special tax mentioned in the petition on the terms and conditions set forth therein:

The election was duly held and the majority of the Tax Payers voting at said election duly carried the tax.

Thereupon, the Secretary of State announced, "That the special tax of two mills for forty-three years, to be devoted to water, sewerage and drainage, under the terms and conditions set forth in the Tax Payer's petition" had been carried.

Thereupon, the City Council adopted, June 22nd, 1899, Ordinance No. 15391, C. S. levying the special tax, in accordance with the terms and conditions of the petition of the property tax payers.

A special session of the Legislature was convened and Act 6 of 1899 was adopted, the preamble of which recited the terms and conditions of the petition of the property, Tax Payers, by virtue of which the tax was levied.

A constitutional amendment was at the term of the Legislature duly proposed and adopted, which ratified and approved Ordinance No. 15391 C. S. with the further declaration that its validity shall never be questioned;

Your Petitioners now represent, that the foregoing proceedings commencing with the petition of the property Tax Payers and ending with the ratification by constitutional amendment of Ordinance No. 15391 C. S. constitute a binding and lawful contract between the property Tax Payers and the City of New Orleans; which under the Constitution of the United States, could not be impaired by subsequent State Legislature.

4 Your petitioners aver that under their aforesaid contract, they are entitled to a "free sewerage system, with free water therefor".

That free sewerage water means the water which is used by the Tax Payers in the various receptacles, in their houses, used for cleansing purposes, and this includes domestic water;

That all the water which is discharged into the sewers, is sewage water and is to be free to the Tax Payers;

That a free sewerage system, with free water therefor, could not be operated, if only the closet water was to be connected to the sewers, for want of sufficient flushing water;

Your Petitioners now aver, that the Legislature of 1908, under Act No. 270, impaired the obligations of the aforesaid, by adopting a new definition of sewerage water and naming a portion thereof, domestic water and giving power and authority to the Sewerage & Water Board, to charge for domestic water and giving to the said

Board a lien and privilege on their property for any water consumed or used therein, although the same be sewerage water.

That the Sewerage & Water Board by virtue of the Act of 1908, adopted an ordinance fixing rates and making charges for the water used by your Petitioners, which under the terms of their contract is free; and fixing penalties for non payment of the water rates so fixed, which are illegal and inequitable;

That said Ordinances, which are Nos. — are null and void and of no force and effect;

Your Petitioners further aver that for a period of ten years they have been paying their sewerage and water tax of two mills, without the benefit to themselves and now that they are about to obtain the benefit of their previous expenditures, they are denied free water by the Sewerage & Water Board, on the ground that they must provide a revenue sufficient to pay the expenses of running the Sewerage & Water Plant;

5 Your Petitioners aver that said plea is not true, because under Section 28 of the Act of the Legislature, No. 6 of 1899, it is specially provided:

"That the City of New Orleans shall annually in her budget of expenses, provide out of her alimony by proper appropriation all the funds necessary and proper, over and above the receipts of said Board for water rates, to maintain and operate in an efficient manner the said public system of sewerage and the said public system of water works, inclusive of interest and sinking funds of any assumed mortgage bonds, and the said Board shall in the first week in November of each year present to the Council an estimate of the amount requisite for these purposes for the following year. No portion of the proceeds of said public improvement bonds or of the said taxes shall ever be applied to the maintenance and operation of said public system of sewerage, water and drainage, but they shall be used for construction purposes only." 1899, p. 27.

That the City Council has made no such appropriation and it would be unfair to compel your Petitioners who have built the system of sewerage and water works to furnish free water to the City of New Orleans, when heretofore she was paying not less than \$165,000.00 to the old water works for water used by her, which amount should be sufficient to maintain and operate the Water & Sewerage Plant, if run on an economical basis;

Your Petitioners represent that the Sewerage & Water Board is entitled to charge for all water which does not go in the sewers, such as water used by steam mills, livery stables, dairies, etc. water used to sprinkle the gardens and the like and if the revenue derived from such sources is not sufficient to pay the expenses of the Board, then the City Council is to appropriate out of her alimony "to maintain and operate in an efficient manner the said system of Sewerage & Waterworks."

Your Petitioners are therefore entitled to have the Act of the Legislature of 1908, No. 270 and the Ordinances of the Sewerage &

6 Water Board passed thereunder declared unconstitutional, null and void as in violation of the Constitution of the United States, and impairing the obligations of their contract aforesaid;

Your petitioners further represent, that under the Constitution of the United States they are further protected in the ownership of their cisterns and the enjoyment thereof, to such an extent, that the State has no right to pass any law which shall deprive them of the same without due process;

Petitioners represent that they own cisterns in which they keep a supply of rain water; that they have owned their cisterns for a great many years without endangering their health, and that said cisterns have a money value and the Legislature has no power and no right to take the same away from your Petitioner;

That it is not in the power of the Legislature to authorize or empower the Sewerage & Water Board to do away with the cisterns of Petitioners;

That the Sewerage & Water Board have adopted an ordinance and will shortly exercise the authority conferred on them and will attempt to deprive your Petitioners of their cisterns;

That the aforesaid act of the Legislature and ordinance of the Sewerage & Water Board are not passed in the exercise of their police power, for the reason that the said law and ordinances are revenue measures, levying in disguise a tax on your Petitioners which they have no right to levy otherwise, the limit of taxation having been reached. That all cisterns are not to be done away with, but only those situated on premises to be connected with the waterworks, the intention being to force the property owners to connect with the water-works to pay for the water used by them;

That the said law and ordinances deny to your Petitioners the equal protection of the laws in violation of the 14th Amendment of the Constitution of the United States, in this, that it deprives some persons of their cisterns and allow others in similar localities and under the same circumstances to retain same;

7 That this Honorable Court should declare said Act No. 270 of 1908, and the ordinances passed thereunder, illegal, null and void;

Wherefore, Petitioners pray that the Sewerage & Water Board through Hon. Martin Behrman, its President pro tem, be cited hereto and after due proceedings your Petitioners pray that Act No. 270 of 1908, and the ordinances Nos. 270 of the Sewerage & Water Board be declared unconstitutional, null and void and that your Petitioners are entitled to free sewerage water which includes domestic water and that the Sewerage & Water Board be forever and perpetually enjoined from taking down the cisterns of your Petitioners and that they pray for costs and general relief, etc.

(Signed)

CH'S LOUQUE, *Att'y.*

*Motion to Discontinue as to John B. Meyers.*

Filed June 22, 1909, and Entered on Minutes Same Date.

Civil District Court for the Parish of Orleans.

No. 90127.

N. O. TAX PAYERS' PROTECTIVE ASSOCIATION

VS.

SEWERAGE & WATER BOARD.

On motion of Charles Louque, Attorneys for Plaintiffs and on suggesting to the Court that the name of John B. Meyers was inserted in the petition through error.

It is ordered by the Court that in so far as John B. Meyers is concerned, that this suit be discontinued.

(Signed)

CH'S LOUQUE, Att'y.

*Exception.*

Filed June 25th, 1909.

Civil District Court, Division "A."

No. 90127.

N. O. TAXPAYERS PROTECTIVE ASS'N et als.

VS.

SEWERAGE & WATER BOARD.

To the Honorable Civil District Court for the Parish of Orleans:

Now into Court comes the Sewerage & Water Board made defendant herein, and for exception to the petition of plaintiffs herein alleges:—

First. The petition is not drawn according to the requirements of the Code of Practice.

Second. The citation is not in conformity with the requirements of the Code of Practice.

Third. The N. O. Tax Payers Protective Association has no interest in this suit, and exceptor prays for oyer of its charter.

Wherefore exceptor prays to be hence dismissed with its costs, and for such orders and decrees as the nature of the case may require and that law and equity will permit.

(Signed)

OMER VILLERE,  
Of Counsel.

*Motion to Discontinue Name of N. O. Taxpayers Protective Ass'n.*

Filed December 16th, 1909, and Entered on Minutes Same Date.

Civil District Court, Division "A."

No. 90127.

N. O. TAXPAYERS PROTECTIVE ASS'N & als.

VS.

SEWERAGE & WATER BOARD.

On motion of Charles Louque, attorney for Plaintiffs;

9 It is ordered that the name of N. O. Taxpayers Protective Ass'n, as one of the plaintiffs herein be discontinued.

N. O. La., Dec. 16, 1909.

(Signed)

T. C. W. ELLIS, Judge.

DEIS.

*Endorsed on Exception.*

The discontinuance as to the N. O. Taxpayers Protective Association disposes of the call for oyer of its charter. All other exceptions overruled.

N. O. La., Dec. 16, 1909.

(Signed)

T. C. W. ELLIS, Judge.

*Exceptions Overruled.*

Extract from the Minutes Division "A," Thursday, December 16th, 1909.

Present: the Honorable T. C. W. Ellis, Judge.

No. 90127.

N. O. TAXPAYERS PROTECTIVE ASS'N & als.

VS.

SEWERAGE & WATER BOARD.

The discontinuance as to the N. O. Taxpayers Protective Association disposes of the call of oyer of its charter.  
All other exceptions overruled.



10

*Answer.*

Filed December 22nd, 1909.

Civil District Court, Div. "A."

No. 90127.

N. O. TAXPAYERS PROTECTIVE ASS'N et al.

VS.

SEWERAGE &amp; WATER BOARD.

To the Honorable Civil District Court for the Parish of Orleans:

Now into Court comes the Sewerage & Water Board and reserving the benefit of its exception heretofore filed,

For answer to the petition of plaintiffs herein, denies all and singular the allegations in said petition contained.

Wherefore respondent prays that plaintiffs' petition be dismissed with costs.

And respondent prays for all the orders, decrees and judgment as the nature of this case may require and that law and equity will permit.

(Signed)

OMER VILLERE,  
*Att'y for Respondent.*

11 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

No. 90127.

NEW ORLEANS TAXPAYERS ASSOCIATION et al.

VS.

SEWERAGE &amp; WATER BOARD.

*Testimony and Notes of Evidence in the Above-entitled and Numbered Cause, Taken in Open Court This Wednesday, October 19, 1910, Before Hon. T. C. W. Ellis, Judge, on Behalf of Plaintiff.*

Appearances:

For the Plaintiffs, Charles Louque, Esq.

For the Defendant, Omer Villere, Esq.

By Mr. LOUQUE: Counsel for Plaintiffs produces, offers and files in evidence a petition of the taxpayers to the City Council of New Orleans to levy a special tax for sewerage and water purposes, and it is agreed between Counsel that a correct copy of the petition is to be found in the opinion of the Supreme Court of Louisiana, in the case of Sanders vs. Kohnke, 109 La. Rep. 838.

Counsel for Plaintiff also offers in evidence Special Act 131 of the



Acts of the General Assembly of the State of Louisiana, for the year 1898;

Act 6 of the Acts of the General Assembly (Extra Session, 1899), and

Act 270 of the Acts of the General Assembly for the year 1908; Ordinance of the City Council of New Orleans, No. 15,214, C. S., and

12 Ordinance of the City Council of New Orleans, No. 15,391 C. S.

Counsel for plaintiff also offers in evidence testimony taken by consent, out of court, of Mr. Rudolph Hering.

Index.

13 *Petition of Property Taxpayers to Levy Special Tax.*

To the Honorable Mayor and Council of the City of New Orleans:

The undersigned property tax payers of the City of New Orleans hereby petition you to levy upon all the property of this city a special tax of two mills per annum for forty-three years, beginning with and including the year 1899. The proceeds thereof shall be applied in such ratio as may be required to the following purposes of permanent public improvement, to-wit:

(1) To acquire title by the City, by construction or purchase, or both, to a system of waterworks; to the extension thereof throughout the city, inclusive of the Fifth District; and to the purification of the water supply therefrom.

(2) To the construction throughout the city, inclusive of the Fifth District, of a free sewerage system, with free water therefor; the title whereof shall be in the City;

(3) To the completion of the public drainage system of the city of New Orleans, inclusive of the Fifth District, now in process of construction.

We further petition that the council will, as soon as possible after this tax is voted, obtain legislative and constitutional authority to capitalize on the basis of the present assessment the whole proceeds of this special tax, added to the proceeds on the same basis of one-half the surplus of the present 1 per cent debt tax (already dedicated by law to drainage purposes), by issuing bonds dated July 1, 1900, having fifty years to run, bearing not more than 4 per cent interest, and to be sold only as needed, at not less than par and accrued interest, so that all these works may be completed immediately, and that the interest on said bonds after 1942, and the whole principal thereof, shall be paid after said date by the continuation thereafter of the present 1 per cent debt tax.

We further petition that, if the assessed value of the city shall in the future increase to such a figure as to make one-half the surplus of said 1 per cent debt tax sufficient to pay the whole or the larger portion of the interest on the bonds so issued, then that in all such years there shall be a corresponding diminution in the amount of such special tax.

14 We further petition that the issuance and sale of said bonds shall be placed under the supervision and control of the board of liquidation of the city debt, and that proceeds of said tax shall be paid over as collected to said board.

We further petition that when said special tax is voted the council will organize a "Sewerage and Water Board", to be composed of the drainage commissioners and a tax payer from each of the seven municipal districts, to be appointed by the mayor, with the consent of the council, or elected by the property tax-payers for terms not exceeding twelve years, for the purpose of constructing, controlling, maintaining, and operating said water and sewerage systems.

We further petition that at the election called to take a vote on said tax the council will submit to the property taxpayers the question as to how said seven commissioners shall be named, whether by election by the property taxpayers or by appointment by the mayor, with the consent of the council; and, if the majority in number and amount of those voting at said election shall select either of said methods, then the council shall embody the method so selected in the ordinance levying the tax, and seek legislative and constitutional authority for such method of election; and in case the majority, both in number and amount, voting at such election, do not select either one of said methods, then the mayor shall appoint said commissioners, with the approval of the council, in such manner that the term of one commissioner shall expire every two years; and until said board can be fully organized we petition that the present drainage commission shall perform the duties of said board.

We further petition that the contract for the above work shall be let in such manner as to cover the whole city, the Fifth District included, at the same time, and to be prosecuted in such manner that it shall be completed throughout the city, the Fifth District included, as far as possible, at the same time.

We further petition that, if the city cannot get proper legislative and constitutional authority to issue the bonds aforesaid prior to January 1, 1901, then that said special tax shall thereafter cease and determine, and the proceeds of said tax for the years 1899 and

15 1900 shall be paid over to the drainage commission, to be used for drainage purposes."

Upon being presented with this petition, the council of the city of New Orleans, by Ordinance No. 15,214 C. S., approved April 26, 1899, in the preamble of which ordinance the petition referred to was embodied ordained as follows:

"SECTION 1. Be it ordained by the common council of the city of New Orleans, that a special election is hereby ordered to be held as provided in article 232 of the Constitution of the State of Louisiana and Act No. 131 of 1898, the date of which is to be fixed by proclamation of the mayor, not sooner, however, than thirty days after the official adoption of this ordinance, and that at said election there shall be and is hereby submitted to the property tax payers of the City of New Orleans entitled to vote at such election under the Constitution and laws of this state, the proposition to levy on all

property in the city of New Orleans a special tax of two mills on the dollar for forty-three years, beginning with and including the year 1899, for water, sewerage and drainage purposes, on the terms and conditions set forth in the foregoing petition.

"SEC. 2. Be it further ordained, etc., that there shall also be submitted to the property taxpayers voting at said election the question as to how the seven commissioners, one from each of the seven municipal districts, who are to be members of the "sewerage and water board," shall be chosen—whether by election by the property taxpayers or by appointment by the mayor, with the consent of the council.

"SEC. 3. Be it further ordained, etc., that the official ballot to be used at said election shall be printed as follows:

*"Official Ballot."*

"For the special tax of two mills for forty-three years, to be devoted to water, sewerage and drainage, under the terms and conditions set forth in the property taxpayers' petition.

"Against the special tax of two mills for forty-three years, to be devoted to water, sewerage and drainage, under the terms and conditions set forth in the property taxpayers' petition.

"For the appointment of the seven commissioners by the mayor, with the consent of the council.

"For the election of the seven commissioners by the property tax payers.

"Every voter shall indicate his or her vote by stamping with an official stamp, the proposition he votes for."

16

MAYORALTY OF NEW ORLEANS,  
CITY HALL, June 22, 1899.

Calendar No. 2333.

No. 15,391, *Council Series.*

Whereas, this Council did, by Ordinance No. 15,214, approved on the twenty-sixth day of April, 1899, provide for the submission to the property taxpayers of the city of New Orleans at a special election to be called by proclamation of the Mayor, the proposition to levy upon all the property in the city of New Orleans, a special tax of two mills on the dollar for forty-three years, beginning with the year 1899, upon the terms and conditions set forth in the petition of the property taxpayers made the basis of said ordinance the proceeds whereof are to be devoted to certain permanent public improvements; and

Whereas, the said special election was held in due form of law, according to the proclamation of the Mayor, on the sixth day of June, 1899, and the returns thereof have been duly promulgated, showing that the majority in number and amount of the property taxpayers voting at said election voted in favor of said special tax

and also voted in favor of the appointment of seven commissioners by the Mayor, with the consent of the Council:

Be it Ordained by the Common Council of the City of New Orleans:

SECTION 1. That a special tax of two mills on the dollar is hereby levied upon all the property in the city of New Orleans for forty-three years, beginning with and inclusive of the year 1899; and the proper officers of the city are hereby ordered and directed to place the said tax, in each and every of the said years, upon the tax records and tax bills of the city of New Orleans, and to collect the same at the same time and in the same manner as other city taxes are collected, and to pay the same over day by day as collected to the Board of Liquidation of the City Debt, to be by them disposed of as hereinafter directed.

SEC. 2. That in accordance with the terms of the petition of the property taxpayers aforesaid, the City Council hereby reserves the right and declares its intention to make a corresponding diminution in the said special tax of two mills on the dollar, by special ordinance adopted to that end in any and all years in the future wherein the assessed values of the city of New Orleans shall have increased to such an extent as to make one-half the surplus of the 1 per cent. debt tax sufficient to pay the whole or the larger portion of the interest on the bonds hereinafter mentioned.

SEC. 3. That the proceeds of the said special tax shall be exclusively devoted in such ratio as may be required to the following purposes of permanent public improvement, to-wit:

1. To acquiring title by the city by construction or purchase, or both, to a system of waterworks, to the extension thereof throughout the city, inclusive of the Fifth District, and to the purification of the water supply therefrom.

2. To the construction throughout the city, inclusive of the Fifth district, of a free sewerage system, with free water therefor, the title whereof shall be in the city.

3. To the completion of the public drainage system of the city of New Orleans, inclusive of the Fifth District, now in process of construction.

SEC. 4. That subject to the ratification of the Legislature of the State of Louisiana, and of the people of the State of Louisiana, by an amendment to the constitution of the State, the whole proceeds of this special tax of two mills on the basis of the assessed values of the city of New Orleans for the year 1899, added to the proceeds on the same basis of one-half of the surplus of the present 1 per cent. debt tax, levied by virtue of Art. 314 of the Constitution of the State of Louisiana of 1898, shall be capitalized by issuing the bonds of the city of New Orleans, to be styled the "Public Improvement Bonds of the City of New Orleans," dated July 1, 1900, having fifty years to run, bearing as low a rate of interest as can be negotiated for but not in any event to exceed 4 per cent. per annum, which bonds are to be sold only as needed at not less than par and accrued interest, and the proceeds thereof applied exclusively to the purposes above set forth. The proceeds of the two funds aforesaid shall be applied by preference in each year to the

payment of the interest on said bonds, and any surplus remaining after the payment of such interest, and all arrears of interest, may be used, less 20 per cent. reserve from each year's surplus, in extending and completing the public works aforesaid. Whenever the aggregate of the surpluses aforesaid shall equal a sum sufficient to pay one-half the annual interest on the bonds aforesaid, then no such surplus shall be reserved as long as the amount of this aggregate remains intact; and this reserve shall be used only when necessary to insure the prompt and regular payment of interest on said bonds. So much of the special tax to be levied in the year 1899 as may be necessary shall be used in such acquisitions of property, preliminary investigations, surveys and experiments as the "Sewerage and Water Board," hereinafter constituted, may in their judgment find necessary and proper to enable them to plan, devise and prepare to contract for the construction of the permanent public works aforesaid. Said bonds shall contain a clause authorizing the city of New Orleans after July 1, 1942, to call and pay the principal of the same at par and accrued interest in such manner and form as it may deem best. The interest on said bonds after July 1, 1942, and the principal thereof shall be paid by the levy after the year 1942 of the 1 per cent. debt tax aforesaid until all the principal and interest of said bonds are fully and finally paid, and the proceeds of said 1 per cent. debt tax are specially dedicated to said purpose on and after July 1, 1942.

SEC. 5. That as soon as the legislative and constitutional authority above mentioned for issuance of said bonds is obtained, it shall be the duty of the Board of Liquidation of the City Debt, at the expense of the special tax fund in their possession to advertise for sixty days in London, Amsterdam, New York, Chicago and New Orleans, for sealed proposals to buy the whole issue of said bonds, to-wit: Twelve millions bearing 4 per cent., fourteen millions bearing  $3\frac{1}{2}$  per cent., or sixteen millions bearing 3 per cent, the purchaser to take the bonds from time to time, on sixty days' notice, and pay the cash therefor as the exigencies of the Sewerage and Water Board may require; and it shall accept the bid or bids, or aggregate of bids covering the whole issue, not less than par and accrued interest, that agrees to take such bonds at the best price and the lowest rate of interest; such acceptance, however, shall be subject to the ratification of the City Council by a formal ordinance.

SEC. 6. That when the rate of interest which said bonds are to bear has been fixed by the bid aforesaid, and the acceptance thereof by the City Council, the Board of Liquidation shall cause said bonds to be engraved of proper design at the expense of the special tax fund in their possession. Said bonds shall be of the denomination of \$1000 each, payable in lawful money of the United States, with semi-annual interest coupons annexed, payable January 1 and July 1. They shall be signed by the Mayor and Comptroller of the city of New Orleans and countersigned by the president and secretary of the Board of Liquidation of the City Debt. They may be registered and released from registry under the rules and regula-

tions prescribed by said Board of Liquidation, and no registered bonds shall be negotiable. Like other city bonds they shall be exempt from all taxation, State, parish and municipal, and the tutors of minors and the curators of interdicts shall be authorized to invest the funds in their hands in such bonds.

SEC. 7. That, inasmuch as the surplus of the 1 per cent. debt tax aforesaid has heretofore by Act No. 114 of the Acts of 1896 and Act No. 63 of the Acts of 1898 been devoted exclusively to drainage purposes, and the Drainage Commission, constituted by said acts, has issued bonds, callable after December 1, 1899, payable out of said fund there shall be sold and delivered as aforesaid as soon as possible Public Improvement Bonds enough to provide for the retirement of said drainage bonds, and the first funds that reach the hands of the Board of Liquidation from the sale of said public improvement bonds shall be exclusively and sacredly devoted to the payment and retirement of said outstanding drainage bonds, and any other debts created by the Drainage Commission against said fund, so as to free the said surplus of the said 1 per cent. debt tax from all lawful claims and demands thereon, in order that the dedication of said funds to the purposes of this ordinance may have full force and effect.

On and after the adoption of the Constitutional Amendment aforesaid, the Drainage Commission shall not issue or dispose of any more bonds under the acts aforesaid, and when the bonds issued by it have been retired as aforesaid the proceeds of the sale of all franchises now required by law to inure to said commission shall revert to the city of New Orleans, to be used for permanent public improvements.

SEC. 8. That the Board of Liquidation of the City Debt shall immediately deposit the proceeds of the sale of the "Public Improvement Bonds" aforesaid, and the proceeds of the special tax aforesaid and the surplus of the 1 per cent. debt tax aforesaid, and of the proceeds of the 1 per cent. tax after July 1, 1942, with the fiscal agent of the city of New Orleans, or if the fiscal agent is not satisfactory in the opinion of the Board of Liquidation, with a chartered depository selected by the Board of Liquidation, to the credit of a special fund called the "Public Improvement Fund," and said Board of Liquidation are specially charged with the payment of the interest and principal of the bonds aforesaid.

All payments made by the "Sewerage and Water Board," aforesaid, are to be made in the form of warrants or drafts on the "Board of Liquidation of the City Debt," setting forth the amount thereof, the person to whom payable and the purpose for which the payment is made; and the said Board of Liquidation is hereby charged with the duty of taking care that no irregular, improper or unlawful payments are made out of said fund. Said Board of Liquidation shall have no authority or right to use or to pay out any portion of said special tax fund, or the half surplus of the said 1 per cent debt tax for any purpose whatever except for the purposes specially designated in this ordinance.

SEC. 9. That the powers, duties and functions of the Board of



Liquidation of the City Debt shall continue in full force until all of the public improvement bonds of the city of New Orleans are fully and finally paid.

SEC. 10. That said Board of Liquidation shall semi-annually, on the first of January and the first of July of each year present to the City Council a detailed report of all receipts and disbursements coming into its hands under the provisions of this ordinance.

SEC. 11. That for the purpose of constructing, controlling, maintaining and operating the public water system and the public sewerage system of the city of New Orleans, there is hereby organized and constituted a "Sewerage and Water Board," to be composed of the members of the Drainage Commission as now constituted, and a property taxpayer of two years' previous residence in each of the seven municipal districts of the city of New Orleans, to be appointed by the Mayor for twelve years, with the consent of the Council. The first appointments to be made under its ordinance shall be one for two, one for four, one for six, one for eight, one for ten, one for twelve and one for fourteen years, so that one new commissioner will be appointed every two years; and on the expiration of each commissioner's term his successor shall be appointed for twelve years. All vacancies shall be filled by appointment by the Mayor, with the consent of the Council, for the unexpired term. In case any taxpayer member of the Sewerage and Water Board shall be elected to any office, or receive any appointment which would make him a member of the Drainage Commission, or shall remove his residence from the district from which he was appointed, or shall cease to be a property taxpayer, his membership of said board as such taxpayer shall be ipso facto vacated, and his successor shall be immediately appointed as aforesaid; provided, however, that no person who is a stockholder in any sewerage or waterworks company shall be eligible by appointment to said board.

In case any additional memberships are hereafter added to the Drainage Commission, as now constituted, the incumbents thereof shall not constitute part of said board; and in case any of the present memberships of said Drainage Commission are stricken therefrom the said board shall remain diminished by such reduced membership; provided, however, that the Mayor of the city and the chairmen of the three city committees of finance, budget and water and drainage, and the president and one designated member of the Board of Liquidation shall always be members of said board, even if they should be excluded from the Drainage Commission, or the said commission should be abolished.

The said "Sewerage and Water Board" shall be appointed and organized immediately after the passage of this ordinance, and shall forthwith proceed to execute the powers granted to and duties imposed upon it so far as the same can be done before the legislative and constitutional authority aforesaid can be obtained. It shall make rules fixing its own meetings and procedure, and these rules shall be changed only by the vote of twelve members at a regular meeting.

SEC. 12. That the members of said board shall be removed from

office only in the manner and for the causes enumerated in Arts. 217 and 222 of the State Constitution.

SEC. 13. The Mayor of the city of New Orleans shall be ex-officio president of said board, and said board shall elect some competent and responsible person as secretary, who shall receive a salary of \$1,800 a year, which may be increased with the consent of the City Council. He shall hold office subject to the pleasure of the board. No member of said board shall receive any salary or compensation whatever for his services, except actual traveling expenses incurred at the request of and for the benefit of the board. The board shall have power to elect one of its members president pro tempore, who shall act in the absence or disability of the president.

SEC. 14. That all meetings of said board shall be held in the City Council chamber, and shall be open and public, and all of its transactions shall be recorded in the minutes thereof to be kept in writing by the secretary; and its records shall be public records. Nine members thereof shall constitute a quorum.

SEC. 15. That said board shall elect a competent and skillful engineer as general superintendent and shall fix his salary, and shall from time to time define his duties and powers. He shall hold office during the pleasure of said board. It shall also have power to organize and employ a board of advisory engineers in order to arrange and devise an efficient public sewerage system in this city, and an adequate public water supply of pure water, and to fix the compensation of such advisory board.

SEC. 16. That the said board shall have power and authority to employ all the necessary clerks, engineers, firemen and other skilled and unskilled employes necessary and proper to the efficient administration, operation and control of the said public sewerage and said public water system. All such employes, except unskilled laborers, shall be appointed only after they have passed the civil service examination by the Civil Service Commissioners of the city of New Orleans. They shall hold their positions during good behavior, and shall be removed only for cause and after hearing by the Civil Service Commission. The general superintendent shall have authority to suspend an employe for cause until trial before the commission. Nothing herein shall be construed as preventing the Board from dispensing with the services of unnecessary employes. Civil Service rules shall not apply to the Secretary, the General Superintendent or to the Advisory Board of Engineers.

SEC. 17. That the City Attorney of the city of New Orleans, *virtute officio*, shall be the legal advisor of said board, and said board shall have no power or authority to employ counsel unless some question shall arise between it and the city of New Orleans.

If the legal business of the board shall become of sufficient magnitude to require it, it shall be the duty of the Council, on the request of the Board to authorize the City Attorney to appoint, with the approval of the City Council, a special assistant for this purpose, whose salary shall be fixed by the board and paid out of its funds.

SEC. 18. That said board shall have power by a vote of twelve of its members to acquire in the name and for the benefit of the city



of New Orleans the plant and franchises of any water or sewerage companies in the city of New Orleans, but no contract for that purpose shall be valid until ratified by ordinance of the Common Council of the city of New Orleans. In case no agreement can be reached between said board and the City Council on the one side and the representatives of said companies on the other, as to the price to be paid said companies for their property and franchises and it shall become necessary for the city of New Orleans to expropriate the same, the price to be paid on such expropriation shall be paid by said board out of the proceeds of the bonds aforesaid. The outstanding mortgage bonds of such companies may be assumed by the city as part of the price. Nothing in this ordinance shall be held to affect the right of either the State of Louisiana or the city of New Orleans in the pending litigation against the New Orleans Waterworks Company, or the New Orleans Sewerage Company.

SEC. 19. That whenever it becomes necessary to expropriate any property convenient or necessary for the public works aforesaid, it shall be the duty of the City Attorney, on the request of said board, to institute such proceedings in the name of the city of New Orleans, and to acquire the title to all such property in the name of said city; and the title to all the public works aforesaid, constructed by said board, and to all property of every kind and nature, real and personal, purchased, or in any way acquired by said board, shall be vested in the city of New Orleans, and said board shall have full authority to expropriate any property in any of the parishes adjoining the parish of Orleans that it may find convenient and necessary for the proper execution of the powers herein granted to it, and to extend its works into such parish for the benefit of the city of New Orleans.

SEC. 20. That it shall be the duty of the said board so to plan, adjust and arrange the said public sewerage and public water systems as to make the same conform to, and as to prevent conflict with, the present approved plans of the Drainage Commission.

SEC. 21. That all persons, firms and corporations that have under and by virtue of any grants heretofore made, express or implied, laid mains, pipes, or conduits, or constructed any railroads, buildings, works or structures of any kind in on or over the public streets, shall be compelled at their own cost and expense to move, shift or adjust their said mains, etc., to the exigencies of said public sewerage and public water systems.

SEC. 22. That the said board shall have full power and authority to make all needful rules and regulations for the use of the said public system of sewerage and the free water supply furnished therewith, and to prevent the obstruction thereof, and to compel all premises in the city of New Orleans to be connected with said system, and to compel the closing and discontinuance of all other sewers, and all vaults, cesspools, privies, water closets, urinals, foul water drains, and outlets for any fluid material whatever; and any violation of the rules and regulations so established by said board and duly promulgated in the Official Journal shall be punished by a fine not exceeding \$25 for each offence, or by, not exceeding thirty

days' imprisonment for each offence, or by both, in the discretion of the court having jurisdiction of the offence.

SEC. 23. That the said board shall have power to fix the rates to be charged private consumers of water, and to collect the same from all persons who use water (except for sewerage purposes only) from the public water supply of the city of New Orleans, except the city of New Orleans and her public institutions, such as jails, schools etc., the Charity Hospital, the Touro Infirmary, the House of Good Shepherd, all orphan asylums and homes for aged and infirm. These charges shall be based, as far as possible, upon the actual amount of water consumed, shall be equal and uniform for each grade or class of customers, and shall be framed so as to cover only the actual cost of the maintenance of the said public water system and of the furnishing of the public and private water supply. Said board shall further have power to make reasonable rules and regulations for the use and consumption by such pay customers, and by such free consumers of the water supply furnished them, and any violation of such reasonable rules and regulations so established by said board, and duly promulgated in the official journal, shall be punished by a fine not exceeding \$25 for each offence, or by imprisonment not exceeding thirty days for each offence, or by both, in the discretion of the court having jurisdiction of the offence.

SEC. 24. That all funds received by the said board from water rates, and from the city of New Orleans, by appropriation from its treasury, shall be deposited to the credit of the said board as collected, with the fiscal agent of the city of New Orleans, and shall not be paid out except upon duly adopted resolutions of appropriations, promulgated in the official journal, and upon checks signed by the president and the secretary of said board and countersigned by the chairman of the Finance Committee of the city of New Orleans.

SEC. 25. That all supplies and material required by said board for the conduct, operation, maintenance and repair of said public systems of sewerage and water shall be purchased on detailed written specifications as to grade, quality and amount from the lowest bidder, who can give the required bond to comply with the contract, at public adjudication after at least ten days' notice in the official journal of the city of New Orleans. In every case it shall have power to reject all bids and readvertise for new bids. In case of emergency the General Superintendent can, with the written consent of the president pro tempore of the board and of the mayor of the city, contract a bill for such supplies and material not exceeding \$500 in amount, but all such bills so contracted must be reported, with the seasons therefor, to the next meeting of the board, otherwise the board shall not pay the same. All contracts for repair or renewal work, not executed by the regular employes of the board, shall be similarly let to the lowest bidder, after similar advertisement, with the same right of rejection.

SEC. 26. That all contracts for the construction of the said public systems of sewerage and water shall be let to the lowest bidder by sealed proposals or by public auction, as the board may determine,

after at least sixty days advertisement in two newspapers in the city of New Orleans, on detailed plans and specifications, one of which specifications shall always be that the contractor shall give bond with some surety company authorized to do business in the State of Louisiana, satisfactory to the board, in a sum of at least 25 per cent of the estimated amount of his bid for the faithful performance of his contract; and in case the work estimated by said specifications shall exceed the sum of \$50,000, bids for the same shall be similarly advertised in New York and Chicago, as well as in the city of New Orleans. Every such contract exceeding \$25,000 in amount shall be approved by resolution of the City Council before the same shall be operative and binding on the said board. In every case the Board shall have power to reject all bids and readvertise for new bids.

SEC. 27. That no member of said board shall ever be interested, directly or indirectly, in any contract, or in the losses or profits of any contract for labor, supplies, material or construction made by said board, nor for six months after the termination of his connection with the board, under the penalty of dismissal from said commission and the absolute nullity of said contract; nor shall any member of said board ever be surety for any contractor, or officer, or employe of the board, under a similar penalty.

SEC. 28. That in all contracts made and executed by said board for the construction or repair of said public systems of sewerage and water, there shall be contained a clause that the contractor shall give the preference in employment to bona fide residents of the city of New Orleans, both as skilled and unskilled laborers, and shall not employ any non-resident laborers, skilled or unskilled (except confidential clerks, chief engineers and head superintendents), as long as any resident labor is ready, willing and able to do the work required; that the penalty for each violation of this clause shall be the forfeiture of the sum of \$25 to be deducted by the board from the contract price due the contractor; and that the general superintendent of said board shall have the authority to dismiss all persons employed in violation of this clause. Provided that this clause shall not apply to skilled mechanics and machinists brought to this city by the manufacturers of machinery solely for the purpose of erecting and testing the same.

No person shall be considered a bona fide resident of this city under this clause of this ordinance unless he has actually resided in the city of New Orleans for six months prior to his employment.

All the permanent employes of said board, who are required to be appointed after civil service examination, shall be of good moral character, and bona fide residents of the city of New Orleans for at least one year prior to their appointment. Said board shall have power, and it shall be its duty to demand and require bonds with good and sufficient surety for the faithful performance of their duties from all of its employes who handle money or material or who fill positions of responsibility.

SEC. 29. That said board shall have power to apportion the proceeds of said Public Improvement Bonds, and the surplus of said

taxes, among the three objects aforesaid—sewerage, water, and drainage but any such apportionment shall be made by a vote of twelve members of the board, exclusive of the Mayor, and shall be also approved by the Mayor in writing; and in case twelve members of said board and the Mayor cannot agree upon any apportionment, the matter shall be referred to the City Council, who shall have power to make said apportionment.

SEC. 30. That the City of New Orleans shall annually in her budget of expenses provide out of her alimony by proper appropriation all the funds necessary and proper, over and above the receipts of said board for water rates, to maintain and operate in an efficient manner the said public system of sewerage and the said public system of water works; and the said board shall in the first week in November of each year present to the Council an estimate of the amount requisite for these purposes for the following year. No portion of the proceeds of said bonds, or of the said taxes, shall ever be applied to the maintenance and operation of said public system of sewerage, water and drainage, but they shall be used for construction purposes only.

SEC. 31. That said board shall not have the power to obligate itself or to create any debt for construction purposes in excess of the cash amount of the proceeds of said bonds and the surplus of said tax, and all such debts and obligations in excess of the actual cash amount of these funds shall be absolutely null and void and of no effect; nor shall the said board, in any year, have the power to spend any sum of money or to create any debt for the maintenance and operation of said public systems of sewerage and water in excess of the actual revenue of that year and all such debts and obligations in excess of the revenue of each year shall be absolutely null and void and of no effect. The surplus revenue of one year may be carried forward and added to the revenue of the following year; but no contract or expenditures of any kind shall ever be made in anticipation of any surplus of either construction or maintenance fund.

SEC. 32. That all connections with the sewerage and water mains of the two public systems aforesaid shall be made at the cost of the said board from the said mains to the edge of the foundations of the buildings on the property line itself, and from that point on, they shall be made at the cost and expense of the owner of the property.

Each owner shall have the right to contract for the putting in of all such connections as he is chargeable with, but all such work shall be done under the rules and regulations and subject to the inspection and control of said board. The board shall take separate bids from contractors for putting in all property holders' connections and fixtures, leaving to each property holder the right to require the work in his premises to be done by such contractor at the bid price, or to employ some one else for that purpose.

SEC. 33. That said board shall have the right to use the power supplied by the central power station of the Drainage Commission for all the necessary and convenient purposes of said public sewer-

age and water systems, and it shall be the duty of the Drainage Commission to furnish such power on demand and free of charge.

SEC. 34. That on the first of January and the first of July of each year, it shall be the duty of said board to make to the City Council, in writing, a full and detailed report of its acts, doings, receipts and expenditures.

SEC. 35. That the contracts for the above works shall be let in such a manner as to cover the whole city, the Fifth District included at the same time, and shall be prosecuted in such a manner that they shall be completed throughout the city, the Fifth District included, as far as possible at the same time.

SEC. 36. That if the City of New Orleans can not get proper legislative and constitutional authority to issue the bonds aforesaid prior to January 1, 1901, then the special tax herein levied shall cease and determine, and the unexpended proceeds thereof for the years 1899 and 1900 shall be paid over to the Drainage Commission, to be used for drainage purposes. In that contingency, the board constituted by this ordinance shall be ipso facto dissolved, and all its books, papers, records, property, etc., shall be taken possession of and held by the Drainage Commission.

SEC. 37. That all ordinances and parts of ordinances contrary to or in conflict with the provisions of this ordinance be and the same are hereby repealed.

Adopted by the Council of the City of New Orleans, June 20, 1899.

W. R. BRASHEAR,  
*Clerk of Council.*

Approved June 22, 1899.  
W. C. FLOWER, *Mayor.*

A true copy:  
J. S. WATERMAN,  
*Secretary to the Mayor.*

20 Dr. JOSEPH M. ELLIOTT, a witness on behalf of plaintiff, being first duly sworn by the Judge, testified as follows:

Direct examination by Mr. LOUQUE:

Q. Doctor, how long have you been a practicing physician in the city of New Orleans?

A. Since April 3, 1889.

Q. Will you please state, Doctor, whether you have had occasion to examine into the utility and hygiene of rain water in the city of New Orleans?

By Mr. VILLERE: That is objected to as entirely irrelevant.

By the COURT: I will refer that objection to the merits and consider the effect of the testimony when I get the case before me.

By Mr. LOUQUE:

Q. Answer the question Doctor?

A. Well, if I understand your question, Mr. Louque, I can only

judge of the effect of the water by my practice in the city of New Orleans.

21 Q. That is just what I mean Doctor?

A. Well, I consider that the water of the cisterns, to my knowledge and in my own practice has never been the cause of any special diseases.

Q. In other words, what my question is leveled at is whether or not rain water, as far as you have seen in your practice, is injurious to the health of the inhabitants who use rain water?

A. It is not.

Q. Do you know as a matter of fact whether people in the City of New Orleans use cisterns?

A. I do know that they use cisterns.

Q. Do you know whether or not previous to the advent of the water works system as established by the Sewerage and Water Board within the last couple of years there was any other supply of water used by the citizens for drinking purposes?

A. The greatest amount of people used cistern water, a few may have used the old water works.

Q. But the greatest amount of people used cistern water?

A. Yes sir.

Q. Previous to the advent of the water works system, Doctor, do you know whether the City of New Orleans was also liable to epidemics of typhoid fever?

A. I do not understand the question.

Q. I mean whether the use of rain water caused typhoid fever in the city of New Orleans, to your knowledge?

A. I do not believe it, no.

Q. Do you know whether a purer water for the health of the citizens could be had than rain water?

A. Unless it be spring water.

Q. Now, when a cistern is properly screened, Doctor, is there any possibility that the cistern water should be the place for the multiplication of stegomya mosquitoes?

22 A. If it is properly screened, it should not.

Q. Out of what kind of wood are cisterns generally made?

A. Cypress.

Q. Is this cypress wood a lasting timber?

A. Yes, sir.

Q. Does it produce any taste in the water?

A. Except when the cistern is rather new; it may produce it then.

Q. Is there anything in the wood of the cistern which is liable to infest or infect the water?

A. No, sir.

Q. Now, Doctor, do you know whether there is any difference in the rain water and in the present river water as used for washing purposes?

A. There is a difference; the rain water takes the soap much better than the river water.

Q. You mean that the river water is harder?



A. It is harder; yes, sir.

Q. Do you know of any cases where the users of rain water have found it disagreeable or injurious to them to drink river water?

A. There are a few cases who have complained every time they drink river water; it affects their bowels.

Q. You are a taxpayer of the City of New Orleans?

A. I am a taxpayer; yes, sir.

Cross-examination by Mr. VILLERE:

Q. Have you ever made any special study of cistern water or of the water furnished by the Sewerage and Water Board?

A. I have not.

Q. You have not. You do know that the majority of the cisterns in the City of New Orleans contain a great deal of dirt, do you not?

A. At the bottom of the cisterns; yes.

Q. At the bottom of the cisterns?

A. Yes, sir.

Q. Is not all of this dirt that has been on the roofs washed into the cistern at every rain?

A. Most of it is; yes.

23 Q. Now, Doctor, are you prepared to testify as an expert, that cistern water has not caused any sickness in New Orleans, and principally among children?

A. I am prepared to say this as far as my practice is concerned, and from talking with several of my friends, they have not noticed any special diseases due to the water of the cisterns.

Q. Well, do you not know that the general opinion of physicians in New Orleans is that the cistern water is not good water for children to drink?

A. I do not; no, sir.

Q. You do not know that?

A. No, sir.

Q. Well, do you know the reverse?

A. Well, I know that the opinion is divided.

Q. You know that the opinion is divided?

A. Yes, sir.

Q. You are not prepared to say that a majority of them do not condemn the use of cistern water?

A. No, sir; I have never canvassed the physicians to find that out.

Q. Are you a believer in the modern theory of germs and bacteria being the cause of most diseases.

A. I am a believer in a great many germ theories; yes, sir.

Q. Do you think there are any injurious germs in cisterns, especially when it does not rain for from three to six weeks?

A. I do not believe that there are any germs in cisterns.

Q. You do not?

A. No, sir.

ROBERT UPSHUR, a witness on behalf of the Plaintiff, being first duly sworn by the Judge, testified as follows:

Direct examination by Mr. LOUQUE:

Q. Are you a taxpayer in the City of New Orleans?

A. I am.

Q. Do you own real estate?

A. Yes, sir.

24 Q. Do you own any cisterns in your property?

A. I have cisterns in my property?

Q. Do you know what the average cost of a cistern is?

A. Yes, sir; the average price is about Thirty-five dollars.

By Mr. VILLERE: I object to this testimony on the ground that the Legislature has passed a law, authorizing or directing the Sewerage and Water Board of New Orleans to abolish cisterns in the City of New Orleans, when the water works system shall be completed, and that the law is either constitutional or not constitutional. The question whether people like rain water or do not like rain water, or whether they think that rain water is better than river water is totally and perfectly immaterial.

The Legislature has the right to authorize and direct the abolition of cisterns. It is a proper regulation, and the motives and the wisdom of it cannot be inquired into.

Colloquy between counsel

By the COURT: I think for the purpose of illustrating the exact subject upon which the Legislature has undertaken to legislate in this act which is the subject of attack here, that I had better permit the witnesses, experts and others, to give their opinion to show properly what experience has demonstrated in regard to it. I may have a very clear opinion in regard to it and the appellate court may have an entirely different opinion; therefore, I think it is better to consider that objection with the merits. Of course, if you are right, the objection will be enforced; otherwise, it will be disregarded. A Bill of Exceptions will take care of it.

AGREEMENT.—It is agreed between counsel that the objection just made shall apply to all testimony of similar character without the repetition; the same ruling and Bill of Exceptions to cover.

By Mr. LOUQUE:

Q. Cisterns cost some money?

A. Yes, sir; they cost money. The Cistern costs money, the foundation costs, and the pipes that lead from the roof into the *that* cistern are very costly.

Q. Has any sickness in your family ever to your knowledge arisen by the use or drinking of rain water?

A. No, sir; not to my knowledge. We have drunk rain  
25 water from time immemorial, and whenever one of us drinks river water, whenever we drink river water it has hurt every one in the house.

Q. Are you addicted to the use of river water; do you drink river water?



A. I would not drink it for anything, under any circumstances.

Q. Can I ask you why?

A. Because I would be afraid to drink it.

Q. Well, you have some reason for being afraid?

A. Because it would hurt my stomach if I drank it.

Q. It would hurt your stomach?

A. Yes, sir.

Q. Have you ever tried to use river water for washing purposes—to wash clothes?

A. Well, we never used it because it is hard. The water from the cistern is soft water and for that reason I have always heard the lady folks say—

By Mr. VILLERE: Do not say what the lady folks say.

A. Well, I am not a wash woman.

By Mr. VILLERE: If you do not know, say so.

By Mr. LOUQUE:

Q. When you wash your hands?

A. I use cistern water. I do not wash my hands in anything else.

Cross-examination by Mr. VILLERE:

Q. You have never washed your face and hands in anything else? You have never washed your face and hands in river water?

A. No, sir.

Q. Then you do not know the difference between river water and cistern water from your own personal experience?

A. No, I do not wash my hands in river water.

Q. You do not know the difference from your own experience?

A. Because I wash my face and hands in cistern water.

Q. You prefer to drink water that is stagnant in a cistern from three to six weeks rather than drink river water?

A. I do, sir.

Q. You know that cisterns are full of all the dirt that washes into them from off the roofs. Don't you know that?

A. I know there is always some dirt in every cistern, just as you have dirty water, but when we have a heavy rain if they would do as I do—you don't have to have dirty cisterns, but there are dirty cisterns, just as there are dirty people.

Q. What do you mean by treating the cisterns properly?

A. To open the faucet and let the rain come down and wash it out.

Q. After a heavy rain?

A. Yes, sir; after a heavy rain, you open the faucet *the* let the water pour into the cistern and out, and then when you see that the water is going to stop—that the rain is going to stop, you close the faucet and the water in a half an hour is as clear as crystal.

Q. You know that all of the dirt cannot get out of the cistern in that way?

A. I think that most of it is gone out of the cistern.

Q. And Mr. Upshur, you say that you do not think that cistern water has ever caused any sickness?

A. No, sir; I do not.

Q. But you are not prepared to say that you know that cistern water has never caused sickness?

A. No, sir.

Q. And you are not prepared to say that cistern water cannot cause sickness?

A. I cannot say that; no, sir.

Q. You say you cannot drink river water?

A. I would not drink it.

Q. You said you cannot drink it.

A. I meant to say that I would not drink it.

Q. Does it hurt your stomach?

A. It hurts my stomach.

Q. Have you a very delicate stomach?

A. No, sir, it is a good stomach.

27 Q. Now, have you ever tried to drink the filtered water since the system has been established?

A. I never tried it, and I do not intend to try it.

Q. Wait a minute. You have never drunk the river water?

A. You asked if I had drunk the filtered water.

Q. Yes?

A. You asked me if I had drunk the river water, and I told you, yes, the old river water, and I knew that we clarified it, or I would never have touched it.

Q. How many times did you drink the muddy river water that used to be delivered by the New Orleans Water Works Company?

A. I never did until after it had gone through my own filter.

Q. How many times do you remember drinking it?

A. I could not say, I never counted it.

Q. About?

A. I could not say.

Q. Did it give you the stomach ache every time you drank it?

A. Every time.

Q. You have never drunk the water as furnished by the City of New Orleans?

A. No, sir; not once, and I do not intend to.

By Mr. LOUQUE: I have another witness, Mr. Adam Ravanack who has not yet come, but if he were here and put on the stand, he would testify that he is a taxpayer, and that each time he drinks River water it makes him sick, causes stomach trouble.

By Mr. VILLERE: I admit that if Mr. Ravanack were here and placed upon the stand he would testify that he is a taxpayer and that each time he drinks river water it causes him the stomach ache.

28 By Mr. LOUQUE: I offer in evidence the communication sent by the Mayor of New Orleans in answer to our communication.

By Mr. VILLERE: This document, which is handed to me by Counsel for Plaintiff- is objected to as irrelevant.

By the COURT: I will admit it as rem ipsam.

By Mr. LOUQUE: But it is more than mere rem ipsam, your Honor.

By the COURT: Well, I will admit it for what it is worth.

By Mr. LOUQUE: Will you admit, Mr. Villere, that if I were to put the other plaintiffs upon the stand that they would testify that they are taxpayers.

By Mr. VILLERE: Yes, I will admit that if you were to put each of the plaintiffs upon the stand that every individual would testify that he is a taxpayer.

Reported by Allan R. Beary, Stenographer, Div. A., C. D. C.

Endorsed on back: No. 90,127. Civil District Court, for the Parish of Orleans, Division "A." New Orleans Taxpayers' Association et al. vs. Sewerage and Water Board. Testimony on behalf of the Plaintiff. Filed Nov. 2nd, 1910. (Signed) T. C. W. Ellis, Jr., D'y Cl'k.

29 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

No. 90127.

NEW ORLEANS TAXPAYERS' ASSOCIATION et al.

VS.

SEWERAGE AND WATER BOARD.

*Testimony and Notes of Evidence in the Above-entitled and Numbered Cause, Taken in Open Court This Wednesday, October 19, 1910, Before Hon. T. C. W. Ellis, Judge, on Behalf of Defendant.*

Appearances:

For the Plaintiffs, Charles Louque, Esq.

For the Defendant, Omer Villere, Esq.

GEORGE G. EARL, a witness on behalf of the Defendant, being first duly sworn by John Sbisa, Minute Clerk, testified as follows:

Direct examination by Mr. VILLERE:

Q. You are the General Superintendent of the Sewerage and Water Board, are you not?

A. Yes, sir.

Q. As general superintendent you are the Chief Engineer of the Sewerage and Water Board and of the Drainage system?

A. Yes, sir.

Q. You have been connected with the Sewerage and Water Board since when?

A. Since 1900.

Q. You are the one who, in consultation with the Board of Ad-

visory Engineers, designed the water and sewer systems of the City of New Orleans, are you not?

A. Yes, sir.

30 Q. Mr. Earl, the law creating the Sewerage and Water Board provides that sewerage water shall be furnished free.

What is the object of having water which the law calls "sewerage water"? What is the object to have such water, whether or not it is paid for?

A. I do not know how much of my opinion and so on I can testify to in court, but, I read that law very carefully and considered all the circumstances under which it was drawn, and I drew my own conclusion that that was put in there, because the people would say if we are going to be compelled to pay to have water closets, or felt that they would be required to pay for the water for flushing those closets—that being the only water which they would want to use, in any event to remove the opposition of people of that kind from having the sewerage system which they would be compelled under the law to use, and the Sewerage and Water Board would be compelled under the law to furnish them with free water for that special use.

Q. That is not responsive to the question. I want to have your opinion as an expert Sanitary engineer—you are an expert sanitary engineer, are you not?

A. Yes, sir; I think so.

Q. You have made a special study of sanitary engineering, have you not?

A. All my life.

Q. Now, I want to know from you a fact, based upon your opinion, what is the necessity of having sewerage water in residences?

Q. The only necessity for having any additional water under the sewerage system is purely for flushing the excremental matter from the water closet into the sewer.

Q. Have you read the testimony of Mr. Hering, a witness in this case?

A. I heard it read, here.

31 Q. Do you agree with or do you differ from Mr. Hering in his testimony?

A. Mr. Hering's testimony is correct entirely. The only point that I noticed in connection with the Board here in New Orleans, is that up to this time we have operated the sewers with only a comparatively small number of flush tanks in service or operation. I do not think we have over three or four hundred—or less than one-third, connected up. We are gradually connecting them up, but do not expect to operate them anywhere near, all the time, as there is an abundance of ground water to take care of the average flushing and it is entirely adequate. The flush tanks will be given periodical flushings which will be done by a small gang of men to cover the sewers, and in a system like this the lack of automatic flush tanks is not very seriously felt.

Q. Since when have you been operating the sewerage system in New Orleans?

A. It has been in operation for about three years.

Q. What has been your experience as to the amount of water which is allowed free to the consumers for flushing their closets, which the Sewerage and Water Board, under its interpretation of the law calls "sewerage water"? Has it proved sufficient or insufficient?

A. It is presumed to be entirely adequate. In point of fact in a great many cases people do not use nearly the amount of water that they are allowed free for sewerage uses, and they, therefore, to that extent, get a less rate on domestic water.

Cross-examination by Mr. LOUQUE:

Q. Are the ordinances or regulations adopted by the Sewerage and Water Board as to the prices charged printed, and are they at your disposal?

By Mr. VILLERE: You will find them at the Secretary's Office; they are printed for distribution. You can get them there.

By Mr. LOUQUE: Well, I will get them and offer them.

A. I want to say that we started out with a flat rate, but we found that the use of water under the flat rate was so excessive that it was absolutely necessary to introduce meters and have the people pay in proportion to the amount of water they used, and that very greatly reduced the consumption and also lowered the price which the individuals pay through the use of meters.

Q. Will you please state what amount of water is used in the city of New Orleans which is not charged for?

A. The approximate total consumption of water now is Sixteen million gallons per day.

Q. How many customers are connected to the water works?

A. There are about twenty-two thousand connections, and I presume there — in the neighborhood of twenty thousand paying consumers—something like that.

Q. Now, out of the water consumed, what proportion is used free by the city of New Orleans in sprinkling the streets, and putting out fires, etc.?

A. I have not tried to divide the different uses made of the water. I think about five and a half million gallons is pay water, and the balance free, used for street sprinkling, public and charitable institutions and other consumers who are designated as free consumers.

A. Could you by any means approximate as near as possible, without being very exact about it, what amount of water is used by the city and the various asylums, public institutions, streets and flushings and for other purposes—I mean by the City of New Orleans?

A. I should say something like six or seven million gallons off hand.

Q. You mean per day?

A. Yes, sir.

33 Q. What is the total water consumption of the city of New Orleans, now?

A. Sixty million gallons, I believe is the amount filtered per day.

Q. And when you had the flat rate, how much?

A. Over thirty million per day, with very much less than half the number of consumers, showing that the paying consumers, under a flat rate, were entirely regardless in their waste of water.

Q. Now, will you please state, in the first place in pumping the water from the river in what condition do you get the water?

A. We get the water just as it runs in the river, carrying the amount of deposit and suspended matter which the river does from two hundred to fifteen hundred parts per million of mud.

Q. What is the *modus operandi* in order to filter the matter and let it go into the system?

A. Well, the water is pumped into what we term the "dirt reservoirs" where a certain percentage of the suspended matter is deposited during the hour approximately which it requires for the water to pass through this great reservoir; then in proportion to the amount or quantity of water passing, and in proportion to the amount of suspended matter and of carbonates of lime and magnesia which exists in the water there is added a very small amount of lime and sulphide of iron.

Q. Do you put in the two together at the same time?

A. Sometimes they are put together and sometimes separately, owing to the condition of the water. Different conditions demand different characters of treatment for most economical results. Of course, the most economical results, of course the less use of chemicals, which cost money. Now, after the addition of the  
34 chemicals the water is mingled and kept passing backward and forward up and down through this great basin. They are what we call the coagulating basins, the purpose of which is to keep everything in suspension as far as possible and keep everything thoroughly mixed until the chemicals have had full time to react. When the reaction takes place and the destruction of all the carbonic—which are precipitated out of the water and it gets into the coagulating basins, and the carbonates of lime and magnesia which the water carried originally, as well as the lime that has been added has been precipitated, and they carry down with them a large proportion of the mud and very fine suspended matter, as well as the bacteria originally contained in the water. After pursuing this method for about seven to fourteen hours you get water which is as pure as you can make it and entirely fit for service. I want to say that the city of St. Louis and other cities which serve water of that character with filtration, using very little chemicals—

By Mr. VILLERE: I want to say that I do not object to all this testimony as absolutely irrelevant and immaterial, simply because I think it saves time by letting it go in.

A. (continued). Then the water is passed on through the filters, with the invariable result that there is at least ninety-eight to ninety-nine and a half per cent of the bacteria originally contained in the river-water removed and all of the suspended matter in the clarification, and the amount of lime and magnesia originally contained



in the water is reduced from its original content, which may have been anywhere from eighteen hundred parts to the million down to thirty or forty parts to the million; thus softening the water as well as removing the bacteria and suspended matter.

Q. Does the precipitate or silt deposited, which you speak of, drop out of the water before sending it to the filtration tanks?

A. We get nearly all out before it goes to the filtering tanks, and when we put the water in the tanks it contains not over fifty parts to the million of suspended matter, and as I said when we begin with the water it contained anywhere from two hundred to fifteen hundred parts to the million of suspended matter. We get out about a cubic yard of deposit to the million gallons of water.

Q. Please state if they use river water for drinking purposes at the City Hall.

A. They do.

Q. Did you ever see any tanks of Abita water going into the city hall?

A. There may be some in the city hall, but not in the Sewerage and Water Board offices. I would not use Abita spring water without boiling it.

Q. Will you please state whether or not before this act of the legislature of 1908 you had found out anything about "domestic water" as used in the testimony of Mr. Hering?

A. I had never heard the word used, and I do not think there is any condition paralleling that in New Orleans, where there is any stipulation in the law, dividing the water between free water for sewerage purposes, which we find on reading the law, and other domestic purposes.

Q. Before the act of 1908 came into operation what would you consider water used for bath purposes after it had been used?

A. All fouled water I regard as sewage. In my opinion all fouled water, even street water if it is fouled, or contains the excrementitious matter from animals and so on is decidedly sewage.

Q. State whether or not you have any regulations of the Sewerage and Water Board relative to the connections of the different receptacles used in houses?

A. Yes, the regulations of the Sewerage and Water Board require that all fixtures in houses, carrying fouled waters, be connected to the sewers, such as wash basins, bath tubs, kitchen sinks, urinals, water closets, etc.

Q. Wash tubs?

A. Laundry water.

Q. I mean to say for washing clothes?

A. Yes, sir, laundry water.

Q. Are those regulations in pamphlet form?

A. Yes, sir.

Q. Have you any of those regulations that you could dispose of?

A. Yes, sir; in my office.

Q. Would you have any objection to letting us have a copy?

A. None whatever.

By Mr. LOUQUE: I offer in evidence, to be produced a copy of the printed regulations of the Sewerage and Water Board of New Orleans, relative to the connection of the receptacles in houses to the sewerage system.

Endorsed on Back: No. 90,127. Civil District Court for the Parish of Orleans, Division "A". New Orleans Taxpayers' Association et al. vs. Sewerage and Water Board. Testimony on behalf of the Defendant. Filed Nov. 9th, 1910. (Signed) T. C. W. Ellis, Jr., Dy. Clk.

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Civil District Court.  
Division " "

No. 90,127.

TAXPAYERS' ASSOCIATION et al.

VS.

NEW ORLEANS SEWERAGE &amp; WATER BOARD.

*Testimony and Notes of Evidence on Behalf of the Plaintiff, Taken in the Office of Omer Villere, Esq., by Consent, on this 18th Day of April, 1910.*

**Appearances:**

Charles Louque, Esq., Representing the Plaintiffs.

Omer Viller, Esq., Representing the Defendant.

Reported by Charles J. Colton, Shorthand Reporter.

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Civil District Court.  
Division " "

No. 90127.

TAXPAYERS' ASSOCIATION et al.

VS.

NEW ORLEANS SEWERAGE &amp; WATER BOARD.

*Testimony and Notes of Evidence on Behalf of the Plaintiff, Taken in the Office of Omer Villere, Esq., by Consent, on this 16th Day of April, 1910.*

## Appearances:

Charles Louque, Esq., Representing the Plaintiffs.

Omer Villere, Esq., Representing the Defendant.

Reported by Charles J. Colton, Shorthand Reporter.

RUDOLPH HERING, Esq., being first duly sworn as a witness by Omer Villere, Esq., Notary Public, Deposes and says:

## Direct examination by Mr. LOUQUE:

Q. Mr. Hering, you are the gentleman who had been one of the engineers of the Board of Drainage of New Orleans, that is to say, one of the Board of Engineers, are you not?

A. I have been one of the Board of Advisory Engineers for the Sewerage and Water Board, one member of it.

Q. You have been one of the members of that Board?

A. Yes, sir.

Q. Will you kindly state, Mr. Hering, whether or not the article which has been published in the Encyclopedia Americana, published by the Scientific American in 1903, was written by you? I hand you the book (Handing book to the Witness).

A. I am the author of the article on Sanitary Engineering, contained in the Encyclopedia you mention.

Q. Will you kindly state, Mr. Hering, in devising the system of sewerage we have, what was intended to be carried into the system, the underground pipes, what kind of water, I mean?

A. All water coming from houses which had been fouled by its use, and also a certain amount of subsoil drainage water  
39 which would naturally get into the pipes and lower the ground water level of the city.

Q. Would your definition include water used for washing purposes, for bath-tubs and wash-stands?

A. Yes; that is a definition as to what the sewers were built for; that is what I understand.

Q. That is the general purpose?

A. Yes sir.

Q. Mr. Hering, you have had considerable experience in engineering, have you not?

A. Yea.

Q. You consider yourself as being an expert in that line?

A. Well, I have had——

By Mr. VILLERE: I admit that Mr. Hering is one of the leading sanitary engineers of the country.

By Mr. LOUQUE:

Q. The object I have in view in asking you the question, Mr. Hering, is to enable me to pay you a fee as an expert in this case, and have it charged as costs, you understand?

A. I do.

Q. Now, in giving your testimony this morning in this case, I would like to know what you fix your fee at, as an expert, to testify as you have.

A. Well, for depositions such as this, or for giving any opinion on such subjects, the practice has been, among engineers and with my firm in particular, to charge a minimum fee of one hundred dollars.

Q. Well, Mr. Hering, I now hand you one hundred dollars for your costs in this case, for the payment of your testimony as an expert, (Handing one hundred dollars to the Witness).

A. Yes sir.

Cross-examination by Mr. VILLERE:

Q. Mr. Hering, I understand you to say that a sewerage system in a modern city is built to carry off the excrement in the water-closets, and to carry off kitchen water, bath water, wash-stand water, the urine in urinals, etc., is that correct?

A. Yes, sir.

Q. And I understand you also to say or to mean that whatever goes into the sewers is sewage?

A. Yes, that is, what flows in the sewers we call "sewage".

Q. That is, at the discharge pipe in the river, everything that comes out of the sewers is sewage?

A. Yes, sir.

Q. And if you were to pour a bottle of cologne water into your bath, then the water and the cologne going through the sewers would be sewage?

A. It would.

Q. And if you had a barrel of claret wine that had decomposed or had been spoiled in some way, and you were to pour it down your water-closet, then after it got into the sewerage system it would be sewage?

A. It would; I would call it that.

Q. Sir?

A. I say, I should call it that.

Q. You would call that "Sewage"?

A. I would.

Q. Then I understand that anything that is carried off in the sewers is sewage?

A Yes, everything that is carried off, together with the means of carrying it off, which is the water.

Q. You would call all that "sewage"?

A. I would.

Q. In other words, Mr. Hering, the water, whether it is used to carry off the solid matter in the water-closets, or whether it is used to bathe in, or whether it is used to wash clothes, or dishes, or bric-a-brac, that water becomes sewage after it gets into the sewerage system?

A. Yes.

41 Q. Now, would you call "sewage" the water in the water-works system, before it goes into the sewers?

A. I would not.

Q. Would you call "sewage" the water which you allow to flow in your bath-tub before having taken your bath?

A. I would not.

Q. Would you call the water that is used for cooking and drinking purposes, "sewage"?

A. I would not.

Q. Would you call the water which you use in your laundry to wash clothes, would you call that water "sewage"?

A. Certainly not before it reached the clothes.

Q. But after having put that water to different domestic uses, and it gets into the sewerage system, then it becomes sewage?

A. It does.

Q. Would you call the running or stagnant water in the open gutters of New Orleans, would you call that "sewage"?

A. I should.

Q. You would?

A. Yes, sir.

Q. Mr. Herring, are you familiar with the different drainage canals in the city of New Orleans?

A. I am.

Q. Some of them are covered canals, and others are open canals?

A. Yes, sir.

Q. Well, what would you call the water in those drainage canals? Would you call it "sewage"?

A. It depends upon the condition: if it were foul water, I should call it "sewage;" if it were clear water, I should not call it "sewage;" I should call it "drainage."

Q. In other words, if it were simply the rain-water being carried off after a rain, you would not then call it "sewage"?

A. Not unless it was dirty and foul.

Q. But if it were dirty and foul, you would call it "sewage," although it ran in a system absolutely disconnected with the sewerage system?

42 A. Yes.

Q. Now, Mr. Hering, in a sewerage system, in a modern sewerage system, like the sewerage system in the city of New Orleans, it is absolutely necessary to have water to flush the water-closets, is it not?

A. It is necessary, because water-closets receive large lumps of

solid excreta, which cannot be moved along in pipes without the assistance of water; and therefore, in the early days this method of sewerage was called the "water-carriage system," because it was necessary to carry the fecal matter away by adding water, so that it would float.

Q. Is there any other necessity to have water for sewerage purposes, in a modern sewerage system like this, except to carry down by gravity the solid matter which is deposited in the water-closets of the city?

A. There is not.

Q. Is there any necessity to have water in order to carry off the water that has been used for bathing purposes, or water that has been used to wash dishes or to wash clothes?

A. There is not; it will run itself.

Colloquy between counsel.

A. That is, the water from the bath-tub will run in the sewer by itself, without the assistance of any additional water; it is not necessary to add water to it.

Q. Now, Mr. Hering, I will ask you: is it not a fact that, except for the solid matter which is deposited in water-closets, there would be no necessity for having extra water for sewerage purposes? Isn't that a fact?

A. Well, if by "extra water" you mean that which is used to carry off the solid matter, I will say that there is no necessity of having any other water, except that which forms the sewage itself, in the sinks, the bath-tubs, or the wash basins.

43 Q. Now, would you consider the water that is drunk in a family, sewerage water or sewage, simply because it eventually finds its way into the sewers in the shape of urine?

A. I would certainly not consider the water I drink, as sewage.

Q. Or sewerage water?

A. No, sir, neither sewerage water nor sewage.

By Mr. LOUQUE:

Q. Mr. Hering, in devising a system of sewerage, what is the least, the minimum quantity of water that is calculated by engineers, in order to maintain the system in a proper condition, that is to say, in a sanitary condition, per capita? Do you understand the question I ask you?

A. Yes, I understand the question; you are asking me for the minimum.

Q. Yes, sir, the least amount.

A. Well, I think the least amount that I ever came across was in England, and it is reported in the list of data pertaining to sewage disposal works; it is eight or ten gallons per head.

Q. Eight or ten gallons?

A. Yes.

Q. Well, what is the average amount that ought to be carried in a sewerage system in order to keep it clean?

A. Well, that would keep it clean, excepting that it is customary

in most cities—in fact, in my opinion, in all of the cities where they want to maintain a nice clean system, it is customary to have so-called flush-tanks at the upper end of the sewers, and they discharge at intervals certain quantities of water, to clean out the sewers.

Q. Just like a siphon; when the well would be filled up, then the siphon would work, and the pipe would be cleaned out, and all that water would be going?

A. Yes, sir.

Q. Is that right, Mr. Hering?

A. Yes.

44 Q. In this case, it would be necessary to have a small jet running in the well all the time, so as to take a certain number of hours to fill up?

A. That is only the case where you have automatic self-acting sewers. The usual method in England is twice a week to fill a man-hole at the head of the sewer, after the outlet has been closed, fill it either by turning on a water spigot, or by dropping water into it from a wagon, and then suddenly opening the valve and allowing this water, which ranges generally from two hundred to three hundred gallons, to rush out through the sewers; and that is done about twice a week. That is a common system in Europe.

By Mr. LOUQUE: In connection with the testimony of Mr. Hering, I offer and introduce in evidence the article written by him in the *Encyclopædia Americana*, published by the *Scientific American*, in 1903.

By Mr. VILLERE:

Q. Mr. Hering, do you happen to know what is the allowance made by the Sewerage and Water Board in New Orleans, per capita, for water to flush the water-closets, which the Sewerage and Water Board allows free, under their interpretation of the law, that water for sewerage purposes means water necessary to flush the closets?

A. If my recollection is right, although I may be wrong, it is ten gallons—

Q. If your recollection is not clear on that subject, Mr. Hering, I can refresh your memory for you.

By Mr. LOUQUE: Mr. Hering can refresh his memory on the subject; I have no objection to that at all.

Colloquy between counsel.

45 (Witness produces a book, which he hands to Mr. Villere.)

By Mr. LOUQUE:

Q. Mr. Hering, I want to ask you another question: Until I had spoken to you on yesterday, with regard to domestic water, did you ever hear of such an expression in relation to sewerage?

A. No, sir.

Q. You had never heard of it before?

A. No.

Q. That was a new definition to you, was it?

A. If I understand you to mean it as a synonym, that is to say,

as though "domestic water" meant the same as "sewage;" is that what you mean?

Q. Well, I am trying to find out, myself. The Legislature has put a definition upon it, or has passed a law in which they say that the Sewerage and Water Board shall have the right to charge for domestic water, provided they would give sewerage water free, that is to say, water that goes into the sewerage—

A. Well, by "domestic water," I should understand the water used in a domicile?

Q. In a house?

A. Yes, sir, in contradistinction to water used for trade purposes.

Q. Would not that include sewage water as well?

A. Well, all of the water used in a house, practically, goes into a sewer, and after that it is sewage.

Q. It is sewerage water, is it?

A. Well, it is not sewage before it is used, but when it is flowing in the sewers, then it is sewage.

Q. Wouldn't that be a synonym, to say that domestic water and sewerage water are the same?

A. No, sir, that would not be a synonym, because I would drink domestic water, and I certainly would not drink sewage.

46 Q. But I mean, Mr. Hering, before the water is used, just as it comes out of the pipe. Suppose, for instance, that the law should say that the Sewerage and Water Board should have the right to charge for domestic water, provided they would not have the right to charge for sewage water; could you understand what they would mean?

A. Well, the only way I can understand that is that the water that is specifically required and necessary to be added to the flow which goes into the sewer—that is to say, I mean the water necessary to carry the fecal matter through the only large opening which exists in a house system. All of the other openings are of an entirely different character, but here, in a case of that kind, you have a large opening which is three inches or more in diameter, to accommodate the fecal matter; and in order to carry that along, it is necessary to have water, and that water is specifically required for that purpose and no other; that is the only reason why that water becomes necessary.

By Mr. VILLERE:

Q. Mr. Hering, I will ask you to please look at this little book which I now show you, which is entitled "Water Rates and Regulations of the Sewerage and Water Board of New Orleans," printed in 1909, and look at page seven, under the heading of "Free Water for Sewerage;" and please tell me whether, in your opinion, the amount of water allowed free for flushing closets is a sufficient amount of water in a system like the sewerage system of New Orleans (handing book to the witness)?

A. I have not seen this before. Will you permit me to read it over?



Q. Certainly, Mr. Hering.

(Witness reads the book in question, to himself.)

A. What is your question?

47 Question read by the shorthand reporter as follows:

Q. Mr. Hering, I will ask you to please look at this little book which I now show you, which is entitled "Water Rates and Regulations of the Sewerage and Water Board of New Orleans," printed in 1909, and look at page seven, under the heading of "Free Water for Sewerage;" and please tell me whether, in your opinion, the amount of water allowed free for flushing closets is a sufficient amount of water in a system like the sewerage system of New Orleans (handing book to the witness)?

A. I find here that the amount of free water is about eleven gallons per head per day for permanent occupants in private residences, etc., and that there are smaller allowances for occupants or employees in stores, etc., and for scholars and teachers in schools. I should say that an allowance of eleven gallons for the purpose of moving the fecal matter of one person in one day, is very liberal. Is that an answer to your question?

Q. Yes.

A. And particularly in view of the entire amount of sewage per capita which we find in some European cities.

Colloquy between counsel.

By Mr. VILLERE:

Q. Mr. Hering, suppose there were two sewerage systems in the city, one system to carry off only what is deposited in water-closets, and another system for the purpose of carrying off bath-water, kitchen water, laundry water, and all other dirty water, would there be an necessity for additional water to flush the system?

A. There would be no additional water required to flush away the suspended matter in the water in the first system you mentioned, namely, that which took all of the dirty water, excluding the excrementitious substances. Such a system has been in use in a number of cities, chiefly Paris.

48 The excrementitious matter was disposed of until about fifteen or twenty years ago, in a different manner. Had it been disposed of in water-carriage sewers, special water to flush the excrements would have been required. Such a system was used in several cities of Holland, and is still used; that is to say, there are pipes receiving nothing but excrementitious matter, and they require a slight amount of water to flush this away. The Paris system was not a pipe system, but one of fosses-mobile; barrels that collected the excrements and were then carted away and replaced by others.

Q. In other words, Mr. Hering, if in sanitary engineering a system was invented, discovered, or devised, by which the fecal matter could be disposed of more economically than in a regular sewerage system, would there be any necessity of using extra water to run or to operate a sewerage system?



A. There would not, except the periodical cleanings, such as we give floors, houses, and streets, and sewers also, to clean them up from general, but slight dirt deposits.

Q. Mr. Hering, in the sewerage system of the city of New Orleans, is there any appreciable quantity of water flowing through the sewerage system, besides the water delivered through the waterworks system?

A. There is.

Q. From whence does that water come?

A. That water is ground water, which enters the sewers through the small openings in the joints, which are almost impossible to prevent; the ground water is that which saturates the soil, and it originates, of course, in the rainfall, part of which percolates into the soil and stays there until it can run off somewhere. Before sewers are built, there is generally no place for it to run off, and it stays there. We put in drain pipes to lower it; we put in sewers in cities to lower it.

Q. When you say, Mr. Hering, that you put in sewers in  
49 cities to lower it, that is not exactly a fact, that the sewers in the cities are to carry off, but the result of these sewer pipes is that it carries off a great deal of that water which is in the soil; isn't that true?

A. That is true, yes, sir; we know that these sewers will carry that water off.

Q. In other words, you know that in whatever soil is impregnated with water, a sewerage system will reduce the line of moisture in the soil?

A. Yes, sir, we know that.

Q. You know, as a fact, that the sewerage system in the City of New Orleans, in addition to the drainage system, has reduced the water line very materially, do you not?

A. I know that, yes, sir, and expected it.

Q. Isn't it a fact that the soil water which filters or percolates into the sewerage system of the City of New Orleans furnished a constant flow into these sewers?

A. It does, and we were obliged to anticipate that in sizing up the sewers and the pumping machinery.

Q. Isn't it a fact, Mr. Hering, that the soil water that percolates through the sewers in the City of New Orleans would be sufficient to flush and keep those sewers clean, and that the water required to carry off the solid matter in the water-closets is required simply to carry it from the water-closets to the main sewers?

A. That is true.

Q. But that, so far as the main sewers are concerned, after that solid matter has reached the main sewers, there is enough soil water entering the sewerage system at every joint, in order to give sufficient water to carry all the sewage off?

A. That is true, yes, sir.

By Mr. LOUQUE:

Q. Mr. Hering, does not that amount of ground water diminish year by year?

50 A. No, sir, it does not.

Q. It remains constant?

A. Yes, sir; that is, that part of the rain water which percolates into the soil and does not run off the surface. That percolation continues until there is a chance for the water to get away, either in a drain or in a sewer, or out into the river or the ocean.

Q. Mr. Hering, in devising a system of sewerage, would it be feasible to dispense with flushing altogether, by reason of this ground water?

A. It would not be, in my opinion, although flushing is dispensed with, for that reason, in most cities of the United States. In a separate system, where the rain water does not enter, and where you want to have a good, clean system, with the minimum of odor, I believe in putting in flush tanks at the heads of the sewers, so as to provide water particularly for the upper ends where sometimes there might not be enough ground water, or even domestic water, to flush away the solid matter. That is to say, even though you use eleven gallons per capita per day, to flush away the fecal matter into the sewers, conditions may occur, and they do occur, to let this water run along quickly in a sewer, in case there are very few houses draining into it, and allow a bit of fecal matter to strand for a while; and to move that in the upper stretches of the sewer, flush tanks are very useful.

By Mr. VILLERE:

Q. The flush tanks are outside of the residences?

A. Yes, sir, they are on the streets.

By Mr. LOUQUE:

Q. Mr. Hering, in the city of New Orleans, does any rain water enter into them, the pipes?

A. It is not supposed to.

Q. It is not supposed to?

51 A. No, sir, and I don't think it does; it should not. It would be against the law, and I don't believe it does.

By Mr. VILLERE:

Q. The only water that enters the sewers in the sewerage system of New Orleans, besides the water coming from water-closets, bath-tubs, wash-stands, sinks, lavatories, etc., is the soil water that percolates or filters into the joints of the sewer pipe?

A. That is true, yes.

Q. And the only object and the only necessity for flushing water in residences, is to carry off from the water-closets to the main sewers the solid matter in the water closets?

A. That is true, and that is the only purpose for which flush tanks are provided.

The signature of Mr. Hering to his testimony is dispensed with, and the testimony will be considered as though it were taken in open court, when the witness does not sign his deposition.

(Endorsed:) No. 90127—Civil District Court, Parish of Orleans—Division "D".—Taxpayers' Association et al. vs. N. O. Sewerage & Water Board.—Testimony and Notes of Evidence taken on the 16th day of April, 1910, on behalf of Plaintiff—Chas. J. Colton, Shorthand Reporter—Filed Oct. 19/10 (Signed)—John W. Andree, D'y Clerk.

52 "Sanitary Engineering, the branch of civil engineering which relates to structures and operations for promoting and guarding the health of communities. It deals with the means of providing cities and towns with pure and wholesome water, with the means for the removal in underground channels, of the spent water supply called sewage, as well as of such ground water and rain water as may be necessary, with the means of removing the various waste products and refuse by cartage, such as garbage, ashes, and street sweepings. It also deals with the subjects of ventilation, water supply, sewerage, drainage, water purification, sewage and refuse disposal and street cleaning. In other words, sanitary engineering embraces the design and construction of all works contributing to public health and comfort, and all means of preventing offensive conditions due to a large number of persons living closely together, as in cities or towns.

"In all cases the sanitary engineer, as is true of the civil engineer, should have for his further purpose the construction of his works so as to bring about the desired result at the least cost, when considering both the first investment and the operating expenses.

"The relations of the public health to this branch of engineering are made plain in the article Sanitary Science. With the rapid advance of practical knowledge along the latter lines, the profession of sanitary engineering, while resting upon the same foundations as civil engineering has in recent years gradually called for an increased practical knowledge of vital statistics, of chemistry and biology as applied to its special branches. It is not necessary for the

53 sanitary engineer to be a trained analyst, or accomplished in the details of state medicine, but he should be in touch with the general progress in these subjects, if his work is to be on the highest plane of excellence. This necessity will be better appreciated after noting a brief review of the leading phases of sanitary engineering.

"In biblical days, pure mountain water in some instances was collected and conveyed through gravity aqueducts to cities and towns. There are some cases to-day, even in civilized countries, where substantially the same procedures as used many centuries ago are still applied. Generally speaking, however, the rapidly increasing density of population, the wide differences in climatic, geological and topographical conditions, and the improvements made in materials and methods of construction, have rendered necessary a vast elaboration of the early principles, in order to furnish the essential basis upon which modern water supplies under various conditions are built and operated. This is true to a greater degree of sewerage works, which have come to the attention of the American engineer, within the past

30 years; and to a still greater degree in the case of works for the purification of sewage and water, and the disposal of garbage, which have even more recently furnished practical problems in this country.

"In the field of water supply engineering there are some instances where pure mountain waters can be readily obtained; some where, the supplies can best be obtained from underground sources; others where the most available supplies are obtained from rivers near at hand, which require purification and pumping to reservoirs of artificial construction; and still other instances where large cities have at hand only small streams, upon which it is necessary to build  
54 large dams to store water during the rainy seasons to serve the needs of the community during times of drought.

"Before the development and general acceptance about 1880 of the germ theory of disease, comparatively little attention was given to the sanitary character of water supplies. Although the danger of sewage pollution was then recognized by some, its full significance was not appreciated, especially in the case of watersheds where the population was largely rural in its nature, until there, were encountered disastrous typhoid fever epidemics, as at Plymouth, Pa., Lowell and Lawrence, Mass., New Haven, Conn., etc. In recent years there has been a marked awakening to the needs of pure water supplies in America, as shown by the consideration given this subject by a majority of the larger cities, and by the practical accomplishments reached in some instances. Compared with the European water supplies, there is yet wide room for improvement in this country, as our prevailing standards are much below those established in northwestern Europe. Thus, in Germany it is an edict of the Imperial Board of Health, following the cholera epidemic in Hamburg, in 1892, that no surface water shall be used as a public water supply without first being filtered in a satisfactory manner. In Europe generally this view is held, and the benefit is shown by the fact that the death-rate from such water-borne diseases as typhoid fever is only one fifth to one third of what it is in American cities.

"As to the so-called mountain streams, the rapid increase in population in this country makes it each year more and more difficult to obtain even comparatively pure municipal water supplies from sparsely inhabited watersheds. In the case of small cities and  
55 towns this can still be done in some instances, but usually it necessitates the purchase of many properties situated on the watercourse, and a systematic patrolling of portions of the remaining area, in order to guard constantly against pollution. This latter procedure is especially effective in conjunction with large storage reservoirs in which self-purification takes place, as in the case of the New York and Boston supplies.

"A ground water supply, where the conditions are favorable, yields as good a water from a sanitary standpoint as can be obtained. This results, of course, from the efficient filtration which takes place under the conditions of nature, as the rainfall percolates through the earth and reaches the underground natural reservoirs from which it is drawn. In this country the most notable ground water supply is that which furnishes about half of the supply for the city

of Brooklyn, and aggregates a daily quantity of about 50,000,000 gallons. Long Island is essentially a large territory of sand, the pores of which afford facilities for the storage of large volumes of rain-water in this naturally formed reservoir, and from which water can be obtained continuously during ordinary dry weather in daily quantities equal to at least 400,000 gallons per square mile. These conditions are unusual, and there is no other instance where such a large volume of underground water is obtained. Many small cities and towns, however, obtain a satisfactory supply from underground streams, which flow through valleys containing deep layers of porous sand and gravel. With varying conditions in the geological formation, these underground supplies naturally present marked differences in the quality of water obtained therefrom. In

56 some instances the ground water is very highly charged with lime and magnesia, thus making the water too hard for acceptable use by the consumers, and especially by those who use it for steam raising purposes. Under these conditions, the sanitary engineer has sometimes to consider the chemical aspect of the problem, and to recommend plans for the softening of the water, such as is the case with the well water supply at Winnipeg, and in many places in the southern part of England, where water is obtained from wells driven into the chalk cliffs.

"Another feature which the sanitary engineer has to consider with regard to ground waters is the presence of iron dissolved from the materials in which the underground water is stored, and which causes it to deposit iron rust, which is seriously objectionable because of the stains it produces in laundry use. This feature can be eliminated by aerating the water and passing it through filters, as is done at Reading, Mass., Red Bank, N. J., West Superior, Wis., and a number of places in the northern parts of Germany and Holland.

"Water derived from rivers flowing near cities and towns forms one of the principal sources of supply in America. In early years raw river water supplies were fairly satisfactory in their hygienic condition. But with the rapidly increasing population, river pollution has become so great that now it is rare for a town or city of any size to obtain a fairly satisfactory supply from river water when taken in its raw condition.

57 "In the Southern and Western country there is the added difficulty of the well-known muddiness, due to the large quantities of silt and clay entering the rivers from soil erosion, and which for many months at a time make the waters decidedly torbid and dirty. To remove this silt and clay constitutes one of the principal tasks of the sanitary engineer. This, as is described in Water Supply Engineering, is accomplished by sedimentation and filtration, and in the last few years a large number of the more important cities have projected, or are building, improvements of this nature.

"The cities situated upon the Great Lakes at one time, obtained from them clear and pure water quite readily. In the instance of several of the larger cities, however, the time has arrived or is rapidly approaching when there is serious difficulty in obtaining pure



water from the lakes in its raw condition, owing to the amount of sewage which reaches the water supply intakes. Usually the pollution is from the city's sewers, but in some instances it is from those of neighboring cities. The earlier intakes, located half a mile or so from shore, were presumably in many cases capable of yielding as pure water as now can be obtained from intakes four miles or more distant from the shore. That the time is approaching, when filtration of the lake supplies is becoming desirable, if not necessary, is shown by the consideration given to that subject by the cities of Chicago, Cleveland and Buffalo.

"In the northern, and especially in the northeastern section of the country, water supplies are frequently obtained from small streams, upon which it is necessary to store water in large impounding basins in order that portions of the rainfall of wet seasons may be made available for seasons of drought. This has developed many problems for the sanitary engineer to consider, especially the care necessary in the selection and preparation of reservoir sites to guard against various vegetable growths, such as give rise to objectionable tastes and odors. The storage of water for long periods of time in such basins naturally results in sedimentation, and in bleaching should the water be colored, which improves the quality of the water so far as its appearance and sanitary aspects are concerned, and which incidentally brings about safety through the long interval which elapses as the water passes through the basins, thus bringing about the death of many objectionable germs which enter the reservoir.

"The number of filtration works for municipal water supplies is rapidly increasing each year, and eventually it is fair to assume will include every important surface water supply in America, as is now the case in the most developed parts of Europe. There are now in this country, over 200 filtration plants, the great majority of which are plants of the so-called rapid or mechanical type, which were built at first in a not very durable manner and are lacking in many appurtenances now recognized as essential to good works. While American engineers can design and build good filtration plants, it is an unfortunate fact that up to the present time the filtration plants in America, of both the slow or sand type and the rapid or mechanical type, have not generally speaking, been well operated, although there are exceptions to this rule in the case of filtration works of each type. The proper operations of waterworks systems to provide palatable and pure water at all times, especially in connection with purification or filtration works, is of exceeding importance, and will require the aid of engineering talent. In this field there appears a favorable opening for many young sanitary engineers. In addition to the sanitary aspect of waterworks engineering, the engineer has frequent occasion to use his judgment and knowledge concerning other lines of hydraulics, including the flow of streams, the construction of dams and reservoirs, pumping stations and distributing systems which will afford suitable quantity of water and pressure not only for domestic use but also for fire purposes.

"A sewerage system has for its purpose the collection and removal



of the foul waters of a community. The term "sewerage" is applied to the system of collecting pipes and underground channels. It begins in the houses at the various receptacles where water is used for cleansing purposes, extends through the streets and ends at one or more places where this dirty water, which we call sewage, is finally discharged. Sewerage contains a small quantity of organic and mineral refuse matter in a condition to be easily and rapidly decomposed. In round numbers it contains less than one part of organic matter and one part of mineral matter to every thousand parts of water. Although this organic matter is so greatly diluted, it is nevertheless capable of causing considerable trouble. It decomposes rapidly, and then putrefaction sets in with the accompaniments of offensive odors, due largely to the growth and activity of those lower forms of life called bacteria. Fresh sewage has no strong or offensive odor. It smells like dish water, and no worse odor than this prevails at the outfall, or points of discharge, in a system of sewers that is not very large but is well planned and carefully maintained and operated.

60 "It is one of the tasks of the sanitary engineer to cause sewage in its flow through the sewers, to be discharged both quickly and completely, so as to allow no sewage matters to be retained in the sewers. To this end it is necessary that the pipes be given a grade, or pitch, which will cause the sewage to flow with a good velocity and keep on moving with its suspended matter without interruption, from the starting point at the house to the place of final disposal. It is also necessary to see to it that the curves, bends, junctions, etc., are so designed and built that they will not operate to retard the flow nor allow accumulations of solid matter to remain at various points where they will decompose and give rise to objectionable odors. To avoid trouble from bad odors it is also necessary to have an open and free communication from the sewers of the houses and streets to the outer air, so that there can be either a free escape or free admission of air, as the case may be, and so that a constant atmospheric pressure is maintained on both sides of all traps to the system.

"Due to the variation in the volume of liquid flowing through the sewers at different times of the day, it is impossible to avoid entirely some incidental deposits of solid matters upon the walls of the sewers, and accordingly it is essential from time to time to flush the sewers, that is, to cause a materially increased flow of water intermittently to pass through them, either by natural or artificial means.

"The removal of ground water and storm water forms another of the tasks of the sanitary engineer. In some cases they are removed in the same sewers as is the domestic sewage. Then we have a so-called combined system of sewerage. In others there are separate systems for removing the storm water and the sewage. Where cities are situated on very flat areas, drainage is one of the most important municipal works, as at New Orleans, where extensive drainage canals and pumping stations are in operation to collect  
61 the rainfall and discharge it into Lake Pontchartrain.

"There were very few built sewers in this country, prior to

1875, and no city which was equipped with a thorough system. Since 1880 great progress has been made in this branch of sanitary engineering in America, partly due to the fact that American cities, as regards sanitary matters, were far behind the European cities, notably in England and Germany, and partly due to the rapid growth of many communities in this country. Prior to a generation ago the subject of sewage disposal and sewage purification made little demand upon the sanitary engineer, for the reason that invariably the sewage was discharged into the nearest watercourse, and, generally speaking, serious nuisances did not result under the conditions then existing. With the development of sewerage facilities in this country and the increase in population, this subject began to press for attention. In Europe there were a few isolated cases where sewage had been used for purposes of irrigation for 100 years or more, but it was not until the middle of the 19th century that it became the object of careful study in Europe, especially in England.

"The first method of purification for the disposal of sewage was that of irrigation, that is the application of sewage to land to facilitate the raising of crops. In some places, as Paris and Berlin, and many places in England, this is still done with considerable advantage, although in no instance does the income received from the sewage farms equal the capital charges upon their purchase and adaptation for irrigation purposes. In many places, also, it is very difficult and expensive to secure adequate areas of suitable land within any reasonable distance of the community having to dispose of the sewage. This condition resulted about 1850

62 in England in various efforts to secure those constituents of sewage which may be used for fertilizing purposes in a manner so that they could be placed upon the market. Various chemical treatments to facilitate this end were developed and patented, until there was suggested a chemical treatment for the disposal of sewage which involved the use of one or more of nearly every chemical which was then manufactured on a commercial scale. Although all efforts then and since failed to establish any method by which the fertilizing properties of sewage could be availed of with commercial success, this proposition now and then still comes to the attention of the sanitary engineer. The cause of the impracticability of this feature lies in the great dilution of the sewage matters and the expense of handling so much other material to get in available form so little nitrogen, potash and phosphorous. The problem of sewage disposal has been and will continue to be one for the sanitary engineer to solve at the least expense necessary for getting rid of the sewage in a manner so that there will be no sanitary objection to the procedure. Of course this results in different methods, for application to problems under the wide range of conditions surrounding the problem.

"After 1870 chemical precipitation processes in various forms were introduced throughout Europe especially in England, where the density of population and the small size of the streams first forced the attention of engineers to this general subject. In some instances chemical precipitation, which can remove under favorable circumstances about 50 per cent of the objectionable organic matter

and about 90 per cent of the total suspended matter, was adequate for local conditions. In this country chemical precipitation works were built about 1890 at Worcester, Mass., and were earlier projected for Providence, R. I., although many delays occurred in the carrying out of the works for the latter city. A few small cities also adopted this method of purification, but it seems to have had no widespread development in America, nor are there indications that such will be the case in the future. In England, chemical precipitation methods have in many cases outgrown their usefulness, due to the fact that they are not capable of producing a sufficient degree of purification, and the time is ripe when other and more efficient methods must be considered to supplement chemical precipitation works if the latter are to be used at all. Thus, at Worcester, Mass., several acres of sand beds have been built by which further to purify the effluent chemical precipitation works. In New England, generally speaking, sufficient areas of porous land (glacial drift formation) are available, so that the cheapest and best method of sewage purification is afforded by the application of the sewage to land for short periods at a time, between which the land is thoroughly cleansed by the entrance of air. This is called intermittent filtration.

"There are two aspects to the problems of sewage disposal. One refers to conditions when it becomes necessary to purify the sewage so as to protect the body of water into which it is discharged, if this is to be used for drinking purposes farther down stream. The other relates to the prevention of over-polluted bodies of water to a degree that results in nuisances from bad odors. In Massachusetts the first of these aspects of the problem of sewage disposal has been developed further than elsewhere in America. Intermittent sand filters have been adopted in numerous cases to purify the sewage with sufficient thoroughness so that the streams into which the  
64 filtered sewage is discharged may be used for drinking purposes. Thus the sewage of the small cities and towns of Natick, Framingham, Marlboro and Westboro is purified to protect the water supply of the city of Boston.

"In many cases, however, this is not feasible, and it is necessary to discharge the sewage of a city into a relatively large stream, for a time at least, and let those towns and cities situated on the same stream lower down purify such portion of the river water as they need for their water supply. The practicability of this proceeding depends of course upon a large number of local conditions.

"The prevailing method of sewage disposal in America is by dilution in the most convenient water course. Seaboard cities find this method to be generally satisfactory if the sewage is first carefully screened so as to free it from those particles which would float and be unsightly. Some inland cities can also dispose of their sewage in this manner satisfactorily, but there are others where more or less trouble results at times of low stream flow, and these troubles are bound to increase as the cities grow in size. Many of them are gradually shaping things, somewhat toward the ultimate adoption of some form of purification works, but generally the ex-

pense is so great that material progress is slow, and it may perhaps only be accelerated by the action of the courts.

"Sewage purification works require a continual municipal expense which usually results in comparatively little benefit to those who have to bear it. Accordingly, where land treatment is not available, cities are anxiously awaiting the results of new methods by which the cost of works of artificial construction will be lessened as compared with those of earlier designs. This is true not only in America but also in Europe, where improvements are needed in many cases.

"A few years ago much was heard by the sanitary engineer of this country concerning the merits of the so-called septic process and of contact beds made of coke or broken stone, which procedures have been much studied in England since 1895. These methods are intimately associated with biological processes by which the bacteria convert putrescible organic matter into harmless and stable mineral matter. While these processes are not so effective or economical as was at first claimed for them, they have much merit and are worthy of careful consideration, especially in those sections of this country where engineers find no porous land near at hand and when some artificially constructed works become imperative. The disposal of trade wastes is becoming an important factor in some of the industrial centres and this problem is one which in future years is bound to come more and more within the attention of the sanitary engineer.

"In Europe, progress in sanitary engineering commenced at an earlier date than in America, largely because the population abroad was much denser. The need for improvements resulted in laws which compelled the installation of better sanitary works at a rapid rate. In this country the States of Massachusetts, New York, Ohio, and a few others, through their boards of health, have a general supervision of questions of water supply and sewerage, so far as the sanitary aspects of new or additional works are concerned. This has been generally helpful, and eventually will probably be extended to practically all of our States. The rules, regulations, etc., of the State sanitary authorities on these matters is a feature of the subject which the sanitary engineer has to consider, as well as the decisions of courts where these form a precedent relative to the sanitary problem under consideration.

"Another branch of municipal works to which the attention of the sanitary engineer is beginning to be drawn is the cleansing of streets and the disposal of garbage and other municipal wastes which cannot be removed by water carriage in underground channels. They include ashes, street sweepings, dry rubbish and kitchen garbage, all of which require collection by special cartage. In small communities the disposal of this refuse is not very difficult or expensive, but in the large cities it is frequently a perplexing and expensive undertaking. It is also a very important sanitary matter, as disease, bad odors and general discomfort result from improper and ineffective attention to these matters. Especially difficult is it in America to get a satisfactory disposal of kitchen garbage.

"Reduction or utilization processes, by which oil, grease, and other commercial products are obtained, have been tried in many cities, but only a few have been operated under conditions to give satisfaction to all concerned. The cremation process, so largely used in European cities, has been tried in some cities, but under conditions placing this process at a disadvantage.

"This is true not only of the type and arrangement of the furnaces used, but particularly in the matter of their operation. With few exceptions these matters have not as yet been in the hands of the engineer, but there is every reason to believe that before long this branch of municipal sanitation will receive on the part of the educated engineer the same skilful attention as the older  
67 branches of sanitary work.

"Speaking generally, the accomplishments in sanitary engineering in America since 1875 have been marked by furnishing cities and towns with good water supplies and with efficient sewers and drainage. Improvements in this line began at a later date here than abroad, and in many ways the Europeans are still in advance as regards the carrying out of the well established principles of this subject, although the contributions and experiences of Americans have added much to its general knowledge, especially as applied to the conditions here existing. In no field of civil engineering does there appear a more promising opening for study and practical activity than in the sanitary branch. See also Sanitary Science.

RUDOLPH HERING,  
*Hydraulic Engineer and Sanitary Expert."*

68 *Communication by Martin Behrman, President Sewerage & Water Board, to the New Orleans Taxpayers' Protective Association, Dated New Orleans, August 16, 1905; Offered in Evidence by Counsel for Plaintiffs.*

Filed October 19, 1910.

Office of the Sewerage & Water Board,  
No. 602 Carondelet Street.

NEW ORLEANS, August 16, 1905.

To the New Orleans Taxpayers' Protective Association, New Orleans,  
La.

GENTLEMEN: In reply to the matter of your petition under date of August 8th, the Sewerage and Water Board of this city begs to express its profound concern, and to say beside that since its organization it has labored faithfully and assiduously to accomplish the purpose of this organization.

The Board entered into performance of the duties assigned to it under the Sewerage and Water Act, composed largely of members drawn from the ranks of the business men of this city, without previous experience or demonstrated fitness from discharge of the public



trust confided to them. Necessarily reasonable time was consumed in study and appreciation of the character of the responsibilities assumed and the mapping out of plans for procedure in the execution of these duties. The organization of the Advisory Board of Engineers and the corps of local engineers, and the required clerical force logically preceding the formulation of plans for the sewerage and water systems, followed by study and investigation to ascertain the character of these plans and the cost of their execution.

When this cost was ascertained it was found to be largely in excess of the amount available for the purpose from the proceeds of the \$12,000,000 bond issue after deducting the one-third of said proceeds authorized by the Sewerage and Water Act to be set aside for drainage purposes, thus presenting a problem, the practical solution of which was made the more difficult by mandatory  
69 conditions in the Act, the nature of which may be easily ascertained and understood by perusal of the Act itself.

The bids for the Public Improvement Bonds which were received in December, 1900, compelled the Board of Liquidation under the law to issue only \$12,000,000 delivered as required by the Sewerage and Water Board. Careful study by the Board of Advisory Engineers and the local engineering department showed that the expenditures required to carry out the provisions of the Act involved approximately for sewerage construction \$5,000,000; for water works construction, including the area covered by existing systems, \$6,000,000; to take up outstanding drainage bonds and complete the drainage contracts then pending, \$3,900,000; and \$1,500,000 for connections from the mains of the sewerage and water systems to the property line of the houses, or a total of \$16,400,000.

The revenues of the Sewerage and Water Board fixed by law, exclusive of the proceeds of the sale of the Improvement Bonds, consist of the two-mill special tax voted by the people, and half of the surplus of the one per cent. debt tax, all of which passes through the hands of the Board of Liquidation.

In reviewing the possible proceeds from these resources it became apparent that large advantage would result by their employment for purposes of construction rather than the payment of interest which would follow the premature delivery of all Improvement Bonds, careful calculations establishing that by prolongation of the period of construction, the issue of bonds could be so regulated as to provide the proceeds for construction which added to the sum of the tax revenues accumulating from the husbanding of interest expenditures would insure construction and completion within a period of seven years of the sewerage and water systems, and the completion of the drainage system, for which contracts had already been made, and only by means of this prolongation of the period of construction was it practicable for the Sewerage and Water Board to construct and complete legally, as required by the Act, out of the total revenues under its control, the great public systems of sewerage and water works, which mean so much for the good of this city and its  
people.

70 It is hardly pertinent to the situation in this paper to refer at length to the huge impediments that faced the Sewerage &



Water Board in the first year of its existence, in the charter and franchises held, or claimed, by the N. O. Water Works Company and the old Sewerage Company, all of which are now a thing of the past, but these played important part as instruments of obstruction to the progress of the Board.

In the history of the Board, dating from the time when active operations in construction were inaugurated, there is record of strenuous effort having been made to commit the Board to giving preference to completion of the planned drainage system before that of the other two, urged on the plea of superiority in results, as to preservation and conservation of the public health, so that the question of the relative merits of the three systems from this view point is not a new thing to the Board, but a subject that has been thoroughly discussed time and again by its committees, and if compliance with the requirements of the Act is of force then no preference can be given between the completion of the sewerage or the water systems, or any extension of the drainage system beyond the limit of expenditure of one-third of the revenues of the Sewerage & Water Board until the two other systems are completed, both of which under the law are to be completed as nearly as practicable at the same time all over the city of New Orleans including the Fifth district (Algiers). With the limited funds at the disposal of the Sewerage and Water Board, and the rate of expenditure practicable under the plans adopted for effective and economical letting of contracts for construction on the various systems, it is clear that nothing less than profound and intelligent study of the entire situation affecting the sewerage and water system, and application of the deductions resulting therefrom could accomplish the best results. The engineering and executive departments of the Board in planning and carry out construction on the sewerage and water system now in progress, have given earnest consideration to the requirements of the law and all the conditions that make for intelligent and economical expenditure of the funds at disposal of the Board, and if under this

71 policy, the Sewerage system is to be so near completion at the end of 1906 as to be available for service in certain sections of the city, and the householders or property owners will make the connections to the sewer mains, at their expense, from the mains to the property line, to be re-imbursed later for this outlay by the Sewerage & Water Board, then no objection should be raised that the new water service is unavailable because, in the opinion of the engineers of the Board, confidently expressed, the completed sewers can be put in operation and can be used with the ordinary water that is now discharged from premises into the street gutters, cess-pools and vaults, and with the natural ground water, or seepage flow, which forms a considerable portion of the total sewerage run-off.

The completion of the water system is to New Orleans a vast undertaking, and as it has been determined to furnish for all purposes clear, filtered and purified water, through this system, the time that is taken for its completion is not delay but has been unavoidable and will be immensely profitable because of the saving effected by letting the contracts for water piping and pumping machinery re-

cently rather than a year or two ago, when price- for the material required for this equipment were abnormally high, higher than ever known before, and further because of the progressive improvements continuously made in the purification of water for public supply, and the result of our own experiments, which are still in progress, establishing the practicability of cheapening the cost of purification and furnishing a softer and better water to our entire community.

In the foregoing the Sewerage & Water Board offers no apology for the course it has so far pursued, but simply submits as briefly as practicable a statement of the conditions they have been called upon to face, and the business or commercial considerations which have influenced the policy it has adopted.

Let us discuss now the results of this policy from a sanitary point of view so far as our city and its people are effected. Your petition appeals for an early completion of the new water system so that the death knell of the house cistern may be tolled. The General Superintendent of the Board, Mr. Geo. G. Earl, has this  
72 to say covering this matter if the new water system were in operation and not the sewerage;

"With 65,000 houses each using many times as much water as at present there would have been a much larger flow of water to the gutters. Many more water closets would have been introduced and the consequent saturation of the soil would have resulted in the overflow of cesspools into gutters as is now common wherever large numbers of water closets are in use. The whole household outflow, except the overflow of cisterns into gutters, is sewage. Its character is bad now and responsible for the septic conditions existing in many of the surface gutters. With overflow from cesspools added the degree of foulness and the extent of foul gutters would be vastly increased. Moreover with a far larger amount of water the total saturation of the soil would be vastly increased with a result that there would be less absorption by the soil of puddles, which form in low places and are most favorable breeding places for mosquitoes. True you would have eliminated cisterns, but you would have so saturated the soil that as large an area of vaults and cesspools, and a much larger area of surface puddles, not to mention 1,200 miles of street gutters filled with water, would exist, all of which would offer an infinitely greater area for the breeding of the mosquitoes. Nor will it do to flatter ourselves that the "stegomyia" only breeds in cisterns. In the very able report of the Mosquito Commission to the Orleans Parish Medical Society it is shown (1st) that in 200 samples of cistern water from similar containers the larvæ of the "stegomyia" predominated in over 60% of the sample; (2nd) that in 21 gutters in the suburbs of the city no less than 16 contained these larvæ, and even in the thickly settled portions of the city where cisterns were numerous, 10% of the samples taken in 82 different and widely scattered localities were found to contain "stegomyia" larvæ.

"The above facts being absolutely proved by a fully competent and trustworthy investigation it is quite evident that the elimination

of cisterns (the preferred breeding place), and the substitution of an increased gutted, puddle and vault area of water surface, would by no means exterminate the "stegomyia" mosquito, which being denied its most favored breeding ground would instinctively seek other available grounds, which grounds it has not entirely refused even when the cisterns of every property were available.

"As between the practicability of adequately protecting cisterns or of effectively protecting gutters, vaults and puddles from mosquito invasion, the chance and costs would be 1,000 to 1 in favor of the first proposition. Cisterns can be effectively screened and the cost to do so would not exceed \$1.00 per capita for the population of the city. Gutters, puddles and vaults are impossible of treatment under conditions now existing except at a continuous cost that would be impossible of consideration as a running item of expenditure extending over a period of years. Nothing short of perfect grading and absolute freedom from weeds would prevent standing water in the gutters. Continuous weekly oiling with large quantities of oil would be required for the vaults, and the puddles must be either eliminated, which is impossible if the ground is too saturated to absorb them, or they must be oiled weekly where they stand long enough to breed mosquitoes.

"Now let us see what are the results and possibility along the line of procedure now being followed:

"1st. Records show that the drainage system went into partial operation in 1900; that since that date there has been a greatly decreased soil saturation; that vast areas nearly always wet formerly, so that one would mire in crossing them, are now usually dry; that puddles over the whole city disappear sooner by absorption into the ground and that excavation show- the water line to be lowered and the amount of water in the soil to be decreased. For some reason or combination of reasons the death rate of New Orleans, which averaged about 28 per 1,000 from 1890, to 1900, without any marked improvement at the end of that period, dropped to about 21.5 per 1,000 in 1900 and has remained at that point to the present time. The main factor of improvement in sanitary conditions, so far as any one can fairly judge, would seem to be decreased soil saturation due to drainage. Following sewerage construction in all localities where considerable areas of sewers were kept continually pumped out, it has been uniformly observed that the effect is the removal of surface puddles and the decreasing, even in many cases to the entire absorption by the soil of the normal gutter flow.

"It was originally estimated, and experience indicates the correctness of the estimate, that the soil or seepage water entering the sewers would amount to 1,225,000 gallons per square mile per day. This, in constant flow, amounts to one-third of the total rainfall, and it is doubtful whether the advantages, as above described of this removal of ground water by under-drainage may not overshadow the other and more obvious advantages to be derived after

every house is connected with the sewers and the fouled dry weather flow, now going to the gutters, goes to the sewers instead.

"It is claimed that sewers without water works will be of no use. The major portion of their usefulness can be in effect as rapidly as they are built and as soon as they are kept continuously pumped out by the regular stations now nearing completion, after which date the soil will be thoroughly under-drained, so that water will stand less in gutters, vaults or puddles and all of the fouled household wastes, which now go into the surface gutters, including all flow from any existing water closets, can be turned into them by proper connections.

"For the above stated reasons (even with no added water facilities) sewerage would be very great benefit, while water works connected to every property, without sewers to carry away fouled wastes, would exaggerate the unfavorable existing conditions to so great an extent as to far over-balance the good which the removal of cisterns would itself accomplish.

"In the above it is intended to raise no issue against the most vigorous prosecution of the water works system possible from this time forward. Indeed, the work is now six months behind, due to the rejection and delay of contracts last December and January.

"The engineering department can do just so much work, and when it is compelled to go over ground once fully covered it is delayed by just that much in covering new ground. It was intended to have had plans and specifications for water purification and pumping stations ready for letting this summer. They  
75 must, if possible, be ready next January, and should be in operation by the end of 1907, when the pumping station, two-thirds of the water works distribution system, and three-fourths of the sewerage system should also be ready for operation."

Corroborative of what Mr. Earl has said is the following extract from the *Encyclopedia Americana*, 1904, Vol. 10:

"As to measures the complete destruction of all breeding places by the drainage of swamps, pools, and ditches is the most effective and permanent. This must be supplemented by emptying or suitably protecting by screening against the access of gravid mosquitoes all artificial vessels, such as pails, rain barrels, cisterns, privies and drains which contain standing water in which mosquitoes may breed."

The Secretary of the Sewerage and Water Board, Mr. F. S. Shields, has this to say:

"The Water Purification Station, with all of its basins, filters, pumps and machinery to supply a half million of people, and in the not very distant future 800,000 people cannot be built in a day. It was known that its design and construction would require from three to four years for the conditions here of soil and foundations, and that character of the water are different from what they are at other points, and plans which give good results to them cannot be applied here.

"There is yet another strong reason why the water works should not have been laid in advance of, and completed prior to construc-

tion of the sewerage system, which is the natural and great increase of foul waste of every character, from so-called sanitary closets, urinals and kitchen sinks, due to the enormous increase of house connections when pipes supplied with clear water would be laid in all the streets and which would flow into and stagnate in the open gutters, disseminating the germs of malignant diseases, like typhoid fever and diptheria, and affording a convenient breeding place for stegomyia and other mosquitoes, for they must and will breed in gutters when the clear water of cisterns is not available.

76 "The question of economy figures here to-. Water mains and pipes are expensive and their laying is rapid, and heavy payments would have to be made early in the seven year period; furthermore, it is intended that the house connections shall be made for both systems through the same trenches which is a matter of great economy, approximately \$1,000,000, and it can be easily done when both systems are being constructed and will be completed at the same time.

"It is doubtful whether the funds which will be available up to the end of 1908 will enable the Board to make these house connections all over the city at that date, as a larger apportionment had to be for drainage than was contemplated when the seven year period was adopted.

"The question of procuring additional funds after 1908 for the completion of the house connections to every premises and also the completion of the entire drainage system which will later insure the drainage of not only the storm water from the gutters, if properly connected with the canals, but also the outlying swamps in the rear of the city—both assured breeding places of the stegomyia when the cisterns are abolished, is under consideration and will be worked out at the proper time so that there may be no cessation of the work, it being understood that this would not mean additional taxation, but simply the capitalization of the taxes already voted by the tax payers and which are to run up to 1942. As these connections are made, the law provides that the cesspools shall be abolished, and this one breeding place of the stegomyia will be eliminated.

"When the connections are made to the sewer pipes the water connections will be made at the same time and every house will have a tap from which clear, potable water can be supplied at a few cents per thousand gallons.

"What progress is being made toward the completion of each system? This question Mr. Shields answers fully as follows:

"The sewerage mains and pipes so far laid show a mileage of 135 miles, but as this mileage includes a greater part of the large and deep sewers and as some of the work is the way of pumping stations is the most expensive to be done, the percentage of the sewerage system completed represented thereby is over 50 per cent. in value of the total amount to be done.

77 "Four new contracts for laying sewer-sub-mains and pipes, covering 65 miles of the streets, were awarded in May last, aggregating a cost of about \$600,000.

"The first large contracts for the water works construction were



also let last May, being one for pumping machinery, pumps, etc., \$480,000, two for furnishing cast iron mains and pipes, \$316,00-, and two for laying 15 miles of large mains, \$180,000 making a total of \$970,000 (say \$1,000,000) and they are now under way.

"Of the three contracts which were let for the drainage of the area below the Old Basin Navigation Canal and the Hagan avenue canal, two are practically completed, and the other is being especially pushed by the engineering department.

"Two new contracts were awarded in May, one to better the drainage of the Third street and Melpomene street canals, and one to relieve Pumping Station No. 2, which will better the drainage of Canal and adjoining streets; these two contracts aggregating a cost of \$215,000, which makes a total of contracts awarded this year of \$1,785,000, possibly when completed \$2,000,000.

"Much work has been done in the cleaning and maintaining of the canals already built and open, and also in putting the Central Power Station, and the pumping stations in first class order, which has resulted in better drainage during the past six months, despite the very rainy season."

Leaving out the question of superiority of claim as to preference in completing any one of the three public systems discussed there can be no division of opinion as to the paramount necessity of having all of them in operation if the health of this city is to be brought up to the highest standard, and provision made for the comfort of its people to which they are fairly and justly entitled.

While this reply, provoked by your petition, is addressed to your exemplary and public spirited organization, it is intended not only to cover the points emphasized in the document, but to reach, if this be practicable all the people of this city, so that a better knowledge of what the Sewerage and Water Board has done and is doing may be diffused, and this public board be judged as fairly as it has right to expect.

Very respectfully,  
(Signed)

MARTIN BEHRMAN,  
*President Sewerage & Water Board.*

78 *Printed Regulation of the S. & W. Board of N. O.; Offered in Evidence by Counsel for Plaintiffs.*

Filed November 21, 1910.

*Notice to Water Consumers.*

February 1st, 1910.

In future, instead of rendering water bills to all of its consumers on the first days of January, April, July and October, as it has done in the past, the Sewerage and Water Board will bill its consumers on the following dates:



## Section.

## Date of bills.

- |    |  |   |  |
|----|--|---|--|
| A  | From the lower side of Canal St. to the Lower parish line and Algiers.<br>(No change.) | { | January 1, April 1.<br>July 1, October 1.    |
| B. | Upper side of Canal Street to the lower side of First Street.                          | { | February 1, May 1.<br>August 1, November 1.  |
| C. | Upper side of First Street to the Upper Parish Line.                                   | { | March 1, June 1.<br>September 1, December 1. |

Each bill will cover, as in the past, a period of three (3) months; flat rate bills being payable quarterly in advance and meter bills at the end of each quarter.

In order to bring about this change it will be necessary to render the next bills as follows:

Date of bill. Section.

Period to be covered by bill.

March 1      C      Meter Bills, 2 months, January and February.

|         |   |   |   |   |
|---------|---|---|---|---|
| April 1 | { | A | {   | Meter Bills, 3 months, Jan., Feb. and March.<br>(No change.)<br>Flat Rate Bills, 3 months, April, May and June.<br>(No change.) |
|         |   | C | Flat Rate Bills, 2 months, April and May. |   |

|       |   |   |   |  |
|-------|---|---|---|--|
| May 1 | { | B | { | Meter Bills, 4 months, Jan., Feb., March and April.<br>Flat Rate Bills, 4 months, April, May, June and July. |
|-------|---|---|---|--|

The object of this change is to enable the department to render its bills and handle its collections with greater dispatch and correctness, and to eliminate congestion in its office during the period when bills are being paid.

*Water Rates and Regulations of the Sewerage & Water Board of New Orleans, 1909.*

[Seal Civil District Court. Nov. 21, 1910. Paid. Thomas Connell, Clerk.]

Water Rates and Rules Governing the Consumption of Water Adopted by the Sewerage and Water Board of New Orleans Dec. 10, 1908, and Officially Promulgated Dec. 28, 1908; Amended Sept. 9, 1909, and Officially Promulgated Sept. 11, 1909.

October, nineteen hundred and nine.

*Official Badge of Sewerage and Water Board, Water Department.*



Before admitting to your premises any one who claims to be an employee of this Department, see that he wears badge similar to the above.

Make all complaints as to errors in bills, water service, or inattention of employees to Room 101 City Hall Annex, phone Main 606.

*Rules for the Collection of Water Rates.*

Adopted by the Sewerage and Water Board Dec. 10, 1908, and Officially Promulgated Dec. 28, 1908. Amended Sept. 9, 1909, and Officially Promulgated Sept. 11, 1909.

1. Flat water rates shall be payable quarterly in advance; on the first days of January, April, July and October.

2. Bills for metered water will be rendered on the first days of January, April, July, and October, to cover water consumed during the preceding three months; but bills may be rendered monthly to large consumers, at the discretion of the Committee on Sewerage and water.

3. All bills shall be paid within fifteen (15) days of the date thereof.

4. To any bill not paid within fifteen (15) days of its date, there shall be added ten per cent. (10%) of the gross amount of such bill. If bill is not paid within twenty (20) days of its date, water supply shall be turned off, and shall not be again turned on until all delinquent bills, penalties, etc., are paid, but any consumer shall be entitled to continue to receive water for sewerage purposes only, provided there is installed separate piping, etc., therefor, as provided in page 6 of the Water Rates and Rules.

5. Failure to receive bill shall not exempt consumer from the provisions of paragraph 4 of these rules.

6. All payments shall be made to the Receiving Tellers, Room No. 101, City Hall Annex. No other person or employee of this Board is authorized to receive or receipt for moneys (except in the event that branch collection agencies should be established in the future).

7. Hours of Collection will be from 9 A. M. to 4 P. M., and on Saturdays from 9 A. M. to 12 M.

NOTE.—A Branch Collection Agency has been established at the Court House in Algiers, where bills for Algiers may be paid from the 5th to the 15th days of each January, April, July and October.

### *Meter Regulations.*

In future, no water service will be installed without a meter, (except fire services equipped with automatic sprinklers or sealed valves). All existing connections will be metered as rapidly as possible; the existing flat rates will prevail until meters are placed.

Unless otherwise requested each double house will be supplied with two (2) meters. If only one meter is desired for a double house, the owner must, at time of making application for service, state this fact in his application, and bind himself in writing to pay water bill for the entire house.

Consumers have the option of either purchasing or renting meters. The following table of meter costs includes not only the purchase price of meter, but its complete installation.

The rental will be collected quarterly; one-fourth of the annual rental being added to each quarterly bill.

| Size.                | Meter costs. | Meter rental.    |
|----------------------|--------------|------------------|
| 1/2 or 5/8 inch..... | \$15.00      | \$1.50 per annum |
| 3/4-inch .....       | 20.00        | 2.00 " "         |
| 1 -inch .....        | 25.00        | 2.50 " "         |
| 1 1/2-inch .....     | 45.00        | 4.50 " "         |
| 2 -inch .....        | 65.00        | 6.50 " "         |
| 3 -inch .....        | 100.00       | 10.00 " "        |
| 4 -inch .....        | 200.00       | 20.00 " "        |
| 6 -inch .....        | 400.00       | 40.00 " "        |
| 8 -inch .....        | 650.00       | 65.00 " "        |

### Repair of Meters.

The Sewerage and Water Board binds itself to maintain without cost to the consumer all meters furnished by it and set by its employees, regardless of whether the meters are purchased or rented.

### Tampering with Meters.

"No one shall tamper with, remove or attempt to adjust or make any repairs to any meter installed by the Sewerage and Water Board. Said work may be done only by regular authorized employees of the board, on all meters, whether owned by property owners or by the Sewerage and Water Board." (The violation of any portion of this rule is a misdemeanor, punishable by fine and imprisonment.)

### Meter Rates.

#### Minimum Meter Rates to All Private Consumers.

|  |        |     |         |
|--|--------|-----|---------|
| For $\frac{5}{8}$ -inch connection ..... | \$1.65 | per | quarter |
| $\frac{3}{4}$ -inch connection .....     | 1.75   | "   | "       |
| 4-inch connection .....                  | 5.00   | "   | "       |
| 2-inch connection .....                  | 3.00   | "   | "       |
| 3-inch connection .....                  | 4.00   | "   | "       |
| 1-inch connection .....                  | 5.00   | "   | "       |
| 6-inch connection .....                  | 7.00   | "   | "       |
| 8-inch connection .....                  | 9.00   | "   | "       |

Each of the above minimum meter rates entitles the consumer to 10,000 gallons of water per quarter. All water consumed in excess of this quantity will be charged for at the rate of 10 cents per thousand gallons.

If meter gets out of order and fails to register, the consumer will be charged at the average daily consumption as shown by the meter when in order, pending repair thereof or the placing of a new meter.

### Free Water for Sewerage.

"Each permanent occupant in private residence, hotel, or boarding house will be allowed for flushing closets 1,000 gallons of water per quarter;

"Each occupant or employee in a store, factory, hotel, restaurant, saloon, theatre, or servant not sleeping on the premises of residences, remaining in the building or on the premises not less than eight hours per day will be allowed free of charge 500 gallons per quarter;

"In schools, colleges, etc., each scholar or teacher will be allowed free of charge 300 gallons per quarter; this allowance not to apply during the period of vacation;

"Closets for the use of the general public, such as are located in hotels, restaurants, saloons, theatres, public halls, amusement parks, etc., will be allowed a quantity of water free of charge to be deter-

mined by the Sewerage and Water Board upon inspection on account of flushing closets, or said premises may be equipped with separate meters on pipes supplying said closets."

### Separate Meter for Sewerage Water.

In case the consumer is not satisfied with the allowance for free water for sewerage uses, he shall be allowed to install a separate meter, which will be furnished and set by the Board, at his own cost, to measure the amount of water used in his water closets, and shall be obliged to keep such closets continuously up to requirements, and such closets shall be subject to frequent careful inspection, and so long as they are maintained in good condition free of any leakage and discharging not over 6 gallons for each flushing, no charge will be made for water furnished to them, but whenever they are found leaking or discharging over 6 gallons per flush, then the consumer shall pay an inspection fee of \$1.00 for each closet so found, and in case of considerable waste, the inspector shall estimate the amount and bill the consumer therefor at 10 cents per 1,000 gallons.

### Fire Protection.

Stand pipe, with hose attachments on each floor; also tank and automatic sprinklers, where the whole from the water main, including meter and detector meter or other approved valves and devices to prevent or record any use other than for fire purposes, is paid for by the property owner, without refund, will be allowed free of any charge other than the maintenance and accounting charge for the specified size of connections, where the consumer takes water for all ordinary uses from the Board in accordance with the established rules and rates. Where the connection for fire service is the only connection, the charge will be double the maintenance and accounting charge.

### Charges for Fire Service.

|   | Size of connection. |              |              |              |
|---|---------------------|--------------|--------------|--------------|
|   | 2"<br>(lead)        | 4"<br>(iron) | 6"<br>(iron) | 8"<br>(iron) |
| Cost of installing fire service from main to property line.<br>(Not including meter.) | \$70 00             | \$60 00      | \$50 00      | 120 00       |
| Quarterly charge for fire service when water is taken for general purposes also.      | 2 00                | 4 00         | 6 00         | 8 00         |
| Quarterly charge for fire service when water is taken for fire purposes only.         | 4 00                | 8 00         | 12 00        | 16 00        |

## Water for Building and Paving Purposes.

|                                  |     |
|----------------------------------|-----|
| Plastering, per square yard..... | ½c. |
| Concrete, per cubic yard.....    | 5c. |
| Brick Work, per cubic yard.....  | 5c. |

Portable Engines, \$3.00 per H. P. per annum.

Bills for Building and Paving Water payable in advance.

Minimum Bill ..... \$1.00

If water for building and paving purposes or for portable engine is obtained from fire hydrant, a regulation spanner must be obtained from the Water Department, and a deposit of \$5.00 made to guarantee its return.

## Opening Fire Hydrants.

The opening or closing of a fire hydrant with any tool or appliance other than a regulation five-sided spanner furnished by the Sewerage and Water Board; or the use of water from a fire hydrant without a written permit, signed by a duly authorized agent of said Board, is a misdemeanor, punishable by fine and imprisonment.

## Rules for Consumers.

(1) Application to Have Water Turned On.—Before water may be turned on to any premises application must be made at the office of the Water Collection Department by the occupant, tenant or owner, or his or her authorized agent, on blanks furnished for the purpose, setting forth clearly the purposes for which the water is desired, the number of rooms, persons and openings in the premises, and any other pertinent data.

(2) Misuse of Water.—No person or family supplied with water from the mains of the Sewerage and Water Board will be allowed to use the water for any other purpose than that stated in the application or agreement, or that estimated for in fixing the rates, nor supply water in any way to any other person or persons without a written permit from the said Board; nor shall they permit others to use their hose or attachments, or leave them exposed for use by others.

NOTE.—The Sewerage and Water Board undertakes, subject to conditions agreed upon, to furnish water for certain specified uses for a certain specified sum. If, therefore, consumers furnish other people water, or for their horses, or sprinkling, etc., or permit it to be taken without permission from this Board, it is a violation of the contract, and persons so offending will be required to pay such extra charge as the Board may deem proper.

(3) Maintenance of Pipe, Etc.—Consumers shall keep all pipe, stop cocks, ball cocks, valves, hose, etc., within property lines, in good repair and prevent unnecessary waste.



(4) Defective Fixtures.—Water will not be furnished where there are defective or leaky water closets, faucets, or other leaky fixtures. When discovered, unless immediate repair is made, the supply will be withdrawn invariably.

(5) Hydrants on Sidewalks.—No hydrants will be permitted on the sidewalk in an open area or in any other locality accessible to persons other than the subscriber; and neither hydrants nor other apparatus must be allowed to run when not in actual use.

(6) Inspection of Work.—Officers and inspectors of the Sewerage and Water Board shall have access at all reasonable hours to all parts of any premises where water connections have been or are about to be made, to inspect the condition and use of the plumbing.

(7) Responsibility of Sewerage and Water Board.—The Sewerage and Water Board does not guarantee a steady pressure or an uninterrupted service for any purpose, but a supply as steady and free from interruption as is practicable with current repairs, additions or accidents incidental to a public water supply.

(8) Right of Sewerage and Water Board.—The Sewerage and Water Board reserves the right to shut off the water in its mains at any time for the purpose of making repairs or extensions, or for other purposes incidental to a public water supply.

(9) Use of Direct Boiler Connections.—Persons using steam boilers and taking a supply of water directly from the service pipe depending upon the pressure in the mains for supplying such boilers or boiler feed pumps which are directly connected with the service pipe, with no intervening vessel into which to receive the water and from which to pump into the boilers, will do so at their own risk, as the Sewerage and Water Board will not be responsible for any accidents or damages to which such devices are frequently subject.

(10) Double Connections.—Not more than two small single houses or one double house shall be supplied through one service pipe and tap to the main, except by special permission, and where such common line is allowed, separate stop and waste cocks shall be provided for each house or each side of the double house.

(11) Abandoned Connections.—Where connections are abandoned or destroyed, the owner of premises or applicant shall pay for having same removed to the main, the ferrule drawn and the opening in the main properly plugged before a new connection will be installed to said premises.

(12) Penalties for Violation.—The violation of any of the foregoing rules is a misdemeanor and will cause the water to be shut off from the premises without notice, and said water will not be turned on again until these rules are fully complied with and satisfactory evidence furnished the Sewerage and Water Board that the offense will not be repeated, and all damages made good, and all back bills paid; and, further, until a fee of One Dollar (\$1.00) to cover cost of turning off and on the water shall have been paid; and further that there shall be a charge of \$1.00 for turning off and on the water supply within thirty (30) days.

### Liability of Property Owners.

Extract from Act No. 270 of 1908.

SECTION 4. Be it further enacted, etc., That the owners of all premises shall be primarily liable for all water rates assessed against such premises for water used for all purposes, except sewerage; and the rates assessed against each premises for water used shall be a lien thereon for three years, equal in rank to the lien of taxes, to take effect against third persons on the recording of the past due bills in the Mortgage Office, the charge for which recording shall not exceed twenty-five cents (25c.) for each bill.

### *How City Water May Be Wasted.*

Avoid Unnecessary Wastes and Reduce the Amount of Your Water Bill.

Gallons Discharged per Hour Through Various Sized Orifices under Stated Pressure.

| Head in feet | Pounds pressure per square inch | Diameter of orifices in inches and fractions of an inch |                    |                    |                    |                    |                    |                    |                     |                     |        |
|--------------|---------------------------------|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------|---------------------|--------|
|              |                                 | $\frac{1}{8}$ inch                                      | $\frac{1}{4}$ inch | $\frac{3}{8}$ inch | $\frac{1}{2}$ inch | $\frac{5}{8}$ inch | $\frac{3}{4}$ inch | $\frac{7}{8}$ inch | $1\frac{1}{8}$ inch | $1\frac{1}{4}$ inch | 2 inch |
| 20           | 8.66                            | 75  | 300                | 720                | 1260               | 1920               | 2760               | 4920               | 7380                | 11100               | 19740  |
| 40           | 17.32                           | 112   | 450                | 960                | 1800               | 2760               | 3969               | 6720               | 10920               | 15120               | 27960  |
| 60           | 25.99                           | 135   | 540                | 1200               | 2160               | 3480               | 4800               | 8580               | 13380               | 19200               | 34260  |
| 80           | 34.65                           | 155   | 620                | 1380               | 2460               | 3840               | 5580               | 9840               | 15480               | 22260               | 39540  |
| 100          | 43.31                           | 172   | 690                | 1560               | 2760               | 4320               | 6240               | 11040              | 17280               | 24900               | 44280  |
| 120          | 51.98                           | 195   | 780                | 1680               | 3000               | 4740               | 6840               | 12120              | 18960               | 27240               | 48480  |
| 140          | 60.64                           | 204   | 816                | 1800               | 3300               | 5100               | 7320               | 13120              | 20160               | 29400               | 52320  |
| 150          | 64.97                           | 210   | 840                | 1920               | 3420               | 5280               | 7620               | 13560              | 21180               | 30480               | 54120  |
| 175          | 75.80                           | 225   | 900                | 2040               | 3660               | 5700               | 8220               | 14640              | 22800               | 32880               | 58560  |
| 200          | 86.63                           | 240   | 960                | 2220               | 3900               | 6120               | 8760               | 15600              | 25020               | 35880               | 62580  |
| 235          | 101.79                          | 270   | 1080               | 2460               | 4320               | 8280               | 11160              | 17100              | 26760               | 38520               | 69460  |

An orifice the size of the lead in an ordinary pencil will, under sixty pounds' pressure, discharge about 10 gallons an hour, 240 gallons a day or 7200 gallons a month—which is more than will be used by a family of five people.

79

*Reasons for Judgment.*

Filed December 22nd, 1910.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

No. 90127.

NEW ORLEANS TAX PAYERS' PROTECTIVE ASSOCIATION  
vs.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

*Opinion and Judgment.*

The plaintiffs in this suit are resident property owners and tax-payers who have, since 1899, paid the two mill tax ordained by the organic and ordinary city and state legislation of that year for the construction of a sewerage and water system for this city, with free water for sewerage. They complain that the Act 270 of 1908, which authorized the Sewerage and Water Board to fix and collect rates for water furnished by said Board and used on the premises of residents, other than sewerage water, and the regulations of said Board fixing such rates, are void, on the theory that all water used on their premises for domestic purposes, such as drinking water, water for cleaning purposes, etc., which is ultimately discharged into the sewers is sewerage water, and that by the "contract," resulting from the sewerage legislation of 1899, levying the two mill tax, and the fact of the people accepting it, all such water was to be free to them as tax-payers and consumers.

They claim that said Act 270 of 1908 and said water-rate regulations are violative of the said "contract" and impair its obligations and, therefore, are null and void.

They also claim that they own their cisterns and other receptacles for water, of money value, which they have used for years for domestic water supply, without injury to the public health, and that said Act of 1908 and said regulations of the Sewerage and Water Board direct their enforced removal, when the connections of the sewerage and water system are made with their premises, without compensation, and that the same are, therefore, void, because  
80 they will operate to expropriate their property without adequate compensation previously made, and without due process of law. They pray that the Sewerage and Water Board be forever enjoined from collecting said rates and from causing the removal of their cisterns, and that Act 270 of 1908 be declared unconstitutional and void.

The issues presented were argued with great force, and, because they present questions of taxation, I have given to them my very best consideration.

The ordainment of a sewerage and water system began in 1899

with the petition of the tax-payers for the levy of a two mill tax to establish the same and to construct the necessary works for its operation. The petition, the said ordinance, the constitutional amendment adopted by the vote of the people and the act of the Legislature, all of 1899, ordained said system and dedicated the two mill special tax for the purpose of acquisition and construction. The guarantee to the tax-payers was that, in consideration of the two mill tax for forty-three (43) years, they should have a sewerage and water system, with free water for sewerage. For the maintenance of the system, the provision was that water rates, to be established by the Sewerage and water Board, and paid by the consumer, should bear the charge, and that for any deficit the city government should provide by annual appropriation.

It seems quite clear that for the purposes of construction the two mill tax was to provide the ways and means, and that for maintenance, water rates, supplemented, in the event of deficit, by the city's appropriation, was the reliance, the only water free, or not subject to the rate charges, being for sewerage.

The language of this law is a "sewerage system with free water therefor."

There has been much evidence and expert opinion as to the meaning of "water for sewerage." I understand that sewerage water is such, as is used for the removal, from residential premises of the accumulations of refuse matter, or excrementa, all more or less solid, which are lodged in the vaults, or drains, or privies of the  
81 residences. Drinking water, water for baths, or other domestic purposes, pure and clean before use, but which, after use, find their way to the sewers, as it seems to me, in the sense and meaning of these special laws, are not sewerage water, when furnished for use by the Sewerage & Water Board, and, if not, there is no guarantee or contract that they shall be furnished free of charge.

There is, I take it, small difference, if any, in the water, forced through the mains or pipes of the defendant, into the premises of the citizen, for use. It is only the use of such water, afterwards, that classifies it into water to be used for sewerage, and water for domestic purposes. What is used for sewerage, that is for cleaning the vaults and privies and drains and removing excrementa and deposits therefrom, is sewerage water, and must be furnished free to the consumer, because paid for by the two mill tax, but all other water used for domestic purposes other than sewerage, is subject to the rates or tax fixed by the Sewerage and Water Board, as may be well classed as "domestic water."

Water for sewerage is for a public use, in the interest of all the people, while water, for drinking, bathing and other domestic purposes, is for the private use of the householder, and in this distinction, we find the reason for the direction of the law, that the former shall be furnished free, and that the latter shall be paid for, by the consumer, at rates to be fixed by the Sewerage & Water Board.

The specification of the law, that "water for sewerage" is to be "free," would seem to carry, with it the conclusion, that water for any other domestic purpose, should not be free, under the well

known rule of construction, that the specification of the one is the exclusion of the other.

These regulations of law do not place it in the power of the Sewerage & Water Board to tax the property holder *ad libitum*. The tax must be reasonable and fair,—proportioned to the quantity of water used by the householder and to the objects intended,—  
82 that is, the proper repair and maintenance of the system. If it should be levied at a rate in excess of these purposes of the law, the tax-payer would have his remedy and the court would protect him.

As to that part of the complaint, relating to the removal of the plaintiff's cisterns, it is shown that there is no purpose to remove them from any premises, until proper connection is made with the sewerage and water system. When this connection shall be made, I have no doubt of the power of the Board to remove them for the general welfare. Whether the owner will be entitled to compensation for the expropriation of his property, for public uses, is a question that will arise upon the demand of the owner of the cistern, when it shall be taken away. That bridge need not be crossed until we reach it. In this particular, the right of each of the plaintiffs will be reserved in the judgment.

Eleven of the forty-three years during which the two mill tax was to run have passed, and a vast beneficial work of sewerage and water and drainage has been accomplished. The health and convenience of the people in this crowded center of population are the desideratum, and private interests must yield to the general good.

It may be found, that, in the course of time, charges for domestic water will prove less than the expense of maintaining cisterns and filters and cut-offs, such as have been heretofore used.

For the foregoing reasons, the Law and evidence being in favor of the defendant,

It is Ordered, Adjudged and Decreed, That there be judgment in favor of the Sewerage and Water Board and against the New Orleans Tax Payers Protective Association et al., Plaintiffs, rejecting the demands of said plaintiffs, and dismissing their suits, and for costs, but reserving said Plaintiffs' right of action for compensation whenever there shall be an enforced expropriation of their cisterns, or other water receptacles, by said Sewerage and Water Board, defendant herein.

N. O., La., Dec. 22, 1910.

(Signed)

T. C. W. ELLIS, *Judge*.



83

*Judgment.*

Extract from the Minutes of Division "A," Thursday, December 22nd, 1910.

Present: the Honorable T. C. W. Ellis, Judge.

No. 90127.

N. O. TAX PAYERS PROTECTIVE ASSOCIATION et als.

VS.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

In this case for written reasons this day filed, the law and the evidence being in favor of the defendant:

It is ordered, adjudged and decreed that there be judgment in favor of the Sewerage and Water Board, and against the New Orleans Tax Payers Protective Association, Joseph M. Elliott, M. D., Robert Upshur, B. G. Carbajal, and others named in the petition, plaintiffs, rejecting the demand of said plaintiffs and dismissing their suits, and for costs; but reserving said plaintiffs' right of action for compensation whenever there shall be enforced expropriation of their cisterns or other water receptacles by said Sewerage and Water Board, defendant herein.

*Motion for New Trial.*

Filed January 3rd, 1911, and Entered on Minutes Same Date.

Civil District Court for the Parish of Orleans.

No. 90127.

N. O. TAX-PAYERS PROTECTIVE ASSOCIATION et als.

VS.

THE WATER & SEWERAGE BOARD.

On motion of Charles Louque, Attorney for Plaintiffs, and on suggesting to the Court that the judgment herein rendered is contrary to law and the evidence for the following reasons:

1st. That the contract entered into between petitioners and the City of New Orleans, continued with the Water and Sewerage Board, provides for a free sewerage system with free water thereof;

84 That at the time that said contract was entered into the definition of Sewerage water was all the water used in the houses for cleansing purposes and it was out of the power of the Legislature to change the well understood meaning of this contract, by subsequent legislation, which changed the definition of Sewerage water; that such legislation impaired the obligations of the aforesaid contract and is contrary to Art. 1 Sec. 10 of the Constitution of the United States, which is invoked and pleaded.

2nd. That the said Act of the Legislature taking away the cisterns of your petitioners and the ordinances passed thereunder deprived your petitioners of their property without due process of law and are null and void;

3rd. That the ordinances ordering the cisterns taken away was adopted by the Water and Sewerage Board and was offered in evidence and it was error in the Court to have decided that petitioners should wait until their property was actually taken away before seeking the conservative remedy of injunction.

It is, therefore, ordered that defendants show cause, why a new trial should not be granted herein.

File and submit.

(Signed)

FRED. D. KING, Judge.

*Motion for New Trial Granted.*

Extract from the Minutes of Division "A," Wednesday, January 25th, 1911.

Present: the Honorable T. C. W. Ellis, Judge.

No. 90127.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION

VS.

SEWERAGE AND WATER BOARD.

On the motion for a new trial as to that part of the Judgment which decrees the right of the Sewerage and Water Board to fix a tariff of charges and collect the sewer — under the City ordinance passed under the grant contained in Act No. 270 of 1908  
85 for water other than such as is used for sewerage or flushing purposes the new trial is refused.

As to that portion of the Judgment which recognizes the right of the said Board to remove or cause the demolition or removal of cisterns of property owners under the grant of power conferred by said Act with or without compensation previously made, a new trial is granted, and on this branch of the controversy the case is reopened and the same is ordered fixed by preference for further hearing.

*Motion for Subpœna Duces Tecum.*

Filed December 6th, 1911.

Civil District Court for the Parish of Orleans.

No. 90127.

N. O. TAXPAYERS ASS'N

VS.

SEWERAGE &amp; WATER BOARD.

On motion of Charles Louque, attorney for Plaintiffs, and on suggesting to the Court that the minutes of the defendant corporation should be produced in Court to show that the defendant corporation passed a resolution that the cisterns should be taken down where water connection was made with their waterworks;

It is ordered by the Court that the defendant corporation do produce in open Court their minute book of 1908 and 1909, commencing on July —, 1908.

N. O., La., Dec. 6th, 1911.

(Signed)

T. C. W. ELLIS, *Judge.**Sheriff's Return.*

Filed December 14th, 1911.

Received Wednesday Dec. 6, 1911 and on the 6th day of December, 1911, I served a copy of the within Subpœna Duces Tecum on Sewerage and Water Board, defendant herein, by personal service on Hon. Martin Behrman, Mayor of the City of New Orleans, its President.

Returned same day. Sheriff's fees —.

(Signed)

E. E. CHAILLOT,  
*Deputy Sheriff.*

86

*Admission.*

Filed January 18th, 1912.

STATE OF LOUISIANA,

*Parish of Orleans:*

Civil District Court, Division "A."

No. 90127.

N. O. TAXPAYERS PROTECTIVE ASS'N

VS.

SEWERAGE &amp; WATER BOARD.

It is admitted by counsel for plaintiff- and defendant, that the question of passing a resolution or ordinance abolishing cisterns in

the City of New Orleans, has been up for discussion before the Sewerage & Water Board, on several occasions, but that no resolution or ordinance has ever been adopted by the Sewerage & Water Board, providing for the abolition or destruction of cisterns in the City of New Orleans.

New Orleans, January 18th, 1912.

(Signed)

CH'S LOUQUE,  
Att'y for Plaintiffs.  
WALTER GLEASON,  
Special Counsel Sewerage & Water Board.

*Judgment.*

Rendered January 18, 1912.

Div. "A," Civil District Court, Parish of Orleans.

No. 90127.

N. O. TAX PAYERS PROTECTIVE ASSOCIATION  
vs.  
SEWERAGE & WATER BOARD.

The Court considering the law and evidence to be in favor of defendants, and for oral reasons, and written reasons filed at the former hearing;

It is ordered, adjudged and decreed, that the Sewerage & Water Board do have judgment against the New Orleans Tax Payers Association, rejecting their demands and dismissing this suit, and for costs, but with the reservation of said Plaintiffs' right of action to resist the enforced removal of their cisterns, or to claim compensation for same, if removed, should such removal be attempted, by said Sewerage & Water Board.

Judgment rendered & read, in open Court, January 18th, 1912.

Judgment signed, in open Court, January 24th, 1912.

(Signed)

T. C. W. ELLIS, Judge.

*Motion for a Suspensive Appeal.*

Filed February 2nd, 1912, and Entered on Minutes Same Date.

Civil District Court for the Parish of Orleans.

No. 90127.

N. O. TAXPAYERS ASS'N & als.

vs.

SEWERAGE & WATER BOARD, &c.

On motion of Ch's Louque, attorney for Joseph M. Elliot, R. Upshur, B. G. Carbajal, John Blank, John J. Zollinger, Jean Bou-

bebe, Ada Ravannack, V. Hudson, I. Fernandez, J. Stilzenthaller, E. Carl, J. Reinrich, F. Audiffred, C. E. Ehren, J. F. Elliot, Ch's Lepley, Geo. De Reyna, John R. Howatt, P. J. Spear, P. S. Esnard, C. Kreher, J. H. Nobles, Wm. Schlinder, F. R. Hottinger, Mrs. A. Fahnert, Rev. C. W. Reeves, P. Marchese, Mrs. J. T. Jones, Maud and Irene O'Brien, Mrs. R. H. Burton, Mrs. J. M. Druilhet, Jr., Miss Bettie Owen, Isabella Simmons, Rosine Oubre, Mr. & Mrs. E. P. Bernet, E. Braquet, E. Braquet, Jr., E. H. Anderson, F. M. J. Clark, W. R. Bailey, Otto Knoop, John T. Whittaker, John Karcher, E. O. Ducros, J. B. Laplace, N. Louque, Mrs. C. Louque, and on suggesting to the Court that there is error to their prejudice in the judgment herein rendered and they desire to appeal this cause to the Supreme Court of Louisiana.

It is ordered by the Court that a suspensive appeal be granted to movers, returnable to the Supreme Court of Louisiana on the Third Monday in February, 1912, on movers giving bond conditioned as the law directs in the sum of Two hundred and fifty dollars.

N. O., La., Feb'y 2, 1912.

(Sg.)

T. C. W. ELLIS, Judge.

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### *Appeal Bond.*

Filed February 2nd, 1912.

We, Joseph M. Elliot, R. Upshur, B. G. Carbajal, John Blank, J. J. Zollinger, Jean Boubebe, Adam Ravannack, V. Hudson, I. Fernandez, J. Stolzenthaller, E. Carl, J. Heinrich, F. Audiffred, C. E. Ehren, J. F. Elliot, Chas. Lepley, Geo. de Reyna, John R. Howatt, P. J. Spear, P. S. Esnard, C. Kreher, J. H. Nobles, Wm. Schindler, F. R. Hollinger, Mrs. A. Fahnert, Rev. C. W. Reeves, P. Marchese, Mrs. J. T. Jones, Maud & Irene O'Brien, Mrs. R. H. Burton, Mrs. J. M. Druilhet, Jr., Miss Bettie Owen, Isabella Simmons, Rosine Oubre, Mr. & Mrs. E. P. Bernet, E. Braquet, E. Braquet, Jr., E. H. Anderson, F. M. J. Clark, W. R. Bailey, Otto Knoop, J. T. Whittaker, Jno. Karcher, E. O. Ducros, J. B. Laplace, N. Louque & Mrs. C. Louque, as principals and Charles Louque as surety, are held and firmly bound unto Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Two hundred and fifty Dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with our seal, and dated in the City of New Orleans, on this second day of February, in the year of our Lord one thousand nine hundred and twelve.

Whereas, the above bou-den principals have this day filed a motion of appeal from a final judgment rendered against them in the suit of The N. O. Tax Payers Ass'n vs. The Sewerage and Water Board, No. 90,127 of the Civil District Court for the Parish of Orleans, on the 18th day of January, 1912, and signed on the 24th day of January, 1912.

Now the Condition of the above obligation is such that the above

bound principals shall prosecute their appeal, and shall satisfy whatever judgment may be rendered against them or that the same shall be satisfied by the proceeds of their estate real or personal, of they be cast in the appeal; otherwise that the said surety shall be liable in their place.

89 (Signed)

JOSEPH M. ELLIOTT &  
ABOVE-NAMED PRINCIPALS,  
Per CH'S LOUQUE, *Attorney.* [SEAL.]  
CH'S LOUQUE. [SEAL.]

Signed, sealed and delivered in the presence of  
— — —

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*Certificate.*

STATE OF LOUISIANA,

*Civil District Court for the Parish of Orleans:*

I, J. W. Andree, Deputy Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing (65) Sixty five pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein N. O. Tax Payers Protective Ass'n & als. are plaintiffs and Sewerage & Water Board of New Orleans is defendant, instituted in this Court and now in the record thereof under the No. 90,127 of the Docket, Div. "A" Hon. T. C. W. Ellis, Judge. The Printed Regulations of the Sewerage and Water Board of New Orleans offered in evidence by counsel for plaintiff and filed Nov. 21, 1910, is forwarded as filed.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this 17th day of February in the year of our Lord, one thousand nine hundred and 12 and in the one hundred and — 136th year of the Independence of the United States of America.

(Signed)  
[SEAL.]

J. W. ANDREE,  
*Deputy Clerk.*

91 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Transcript of Appeal Filed.

No. 19304

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION et als.  
vs.  
SEWERAGE & WATER BOARD OF NEW ORLEANS.

Filed February 19th, 1912.

(Signed)

PAUL E. MORTIMER, *Clerk.*



*Cause Continued.*

(Extract from Minutes.)

NEW ORLEANS, THURSDAY, October 10th, 1912.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Associate Justices.

No. 19304.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION et als.  
VS.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

This case was ordered by the court to be continued with preference.

*Cause Continued.*

(Extract from Minutes.)

NEW ORLEANS, THURSDAY, January 9th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

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No. 19304.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION et als.  
VS.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

This case not having been reached, was ordered by the court to be continued with preference.

*Cause Continued.*

(Extract from Minutes.)

NEW ORLEANS, THURSDAY, February 6th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, Walter B. Sommerville, Associate Justices.

No. 19304.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION et als.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

This case not having been reached, was ordered by the court to be continued with preference.

*Cause Continued.*

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, March 5th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 19304.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION et als.

vs.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

93 This case not having been reached, was ordered by the court to be continued with preference.

*Cause Called, Argued, and Submitted.*

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, April 2nd, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 19304.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION et als.

vs.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

This cause came on this day to be heard: Mr. Charles Louque, opened for the plaintiffs, appellants; Mr. W. L. Gleason replied for the defendant, appellee; and Mr. Louque, closed. The court then took the cause under advisement.

*Final Judgment.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, April 14th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice, and Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Monroe, pronounced the opinion and judgment of the Court in the following case.

No. 19304.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION et als.  
vs.  
SEWERAGE AND WATER BOARD OF NEW ORLEANS.

The trial Court did not err in rejecting plaintiffs' demands, and the judgment appealed from is affirmed at plaintiffs' cost.

94

*Opinion of the Court.*

UNITED STATES OF AMERICA,  
*State of Louisiana:*

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, April 14th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

His Honor, Mr. Justice Monroe, pronounced the opinion and judgment of the Court in the following case:

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MONDAY, April 14th, 1913.

Mr. Justice MONROE:

No. 19304.

N. O. TAX PAYERS PROTECTIVE ASSOCIATION et als.

vs.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

Appeal from the Civil District Court, Parish of Orleans.

Ellis, Judge.

*Statement of the Case.*

Plaintiff, an alleged incorporated association of tax payers, complains as follows: That, in 1899, the tax payers of New Orleans petitioned for the levy of a special tax of 2 mills, per annum, for 43 years, for the following purposes: (1) the acquisition, in the name of the city, by construction, purchase, or both, of a system of water works, the extension of the same throughout the city, including the 5th District, and the purification of the water; (2) the construction throughout the city, inclusive of the Fifth District, of a free sewerage system, with free water therefor, the title whereof shall be in the City; that the petition prayed the City Council to order an election thereon, and to obtain constitutional and legislative authority for the purposes therein specified; that the Council ordered that a special election be held, as provided by art. 232 of the constitution and act 131 of 1898, for the submission to the property tax payers, entitled to vote thereat, the proposition to levy the tax mentioned in the petition, on the terms and conditions therein stated, and that the election was held and the tax voted; that the Council, 96 thereupon, by ordinance No. 15391, C. S., levied the tax, in accordance with said petition, and that the Legislature, in special session, passed act No. 6, of 1899, the preamble of which recited the terms and conditions upon which said tax had been levied, as set forth in said petition, and proposed a constitutional amendment which was adopted, ratifying said ordinance; from all of which, there resulted a contract between the City and the Tax Payers, which, under the constitution of the United States, is inviolable;

That, under said contract, they (the Tax Payers), are entitled to a "free sewerage system with free water therefor," which means the water which is used "by the Tax Payers in the various receptacles in their houses, used for cleansing purposes, and this includes domestic water; that all the water which is discharged in the sewers is sewerage water and is free to the Tax Payers; that a free sewerage system, with free water therefor, could not be operated if only the closet water was to be connected with the sewers, for want of sufficient flushing water."

That the Legislature of 1906, by act 270, authorized the Sewerage and Water Board to charge for domestic water; and that said Board has exercised the authority so conferred, by the adoption of appropriate ordinances, and that the obligations of the contract above set forth are thereby impaired.

There are other allegations setting up alleged equities, charging the Sewerage and Water Board with designs on the cisterns, and averring further grounds of unconstitutionality in the acts and ordinances mentioned, after which the petitioners pray for citation of the Sewerage and Water Board and for judgment, decreeing act 270, of 1908, and the ordinance of the Sewerage and Water Board to be unconstitutional, and further decreeing petitioners to be entitled to "free sewerage water, which includes domestic water, and that the Sewerage and Water Board be enjoined from taking down the cisterns of petitioner," etc.

Defendant filed certain exceptions, and plaintiff (the alleged corporation) retired and left the individuals, whose names are given, in its stead, and defendant, then, pleaded the general issue.

The petition of the property tax payers, praying for the levy of the tax, specifies the purposes to which it shall be devoted (as alleged in the petition herein filed), one of said purposes being:

"(2) To the construction throughout the City, inclusive of the "Fifth District, of a *free sewerage system, with free water therefor*, "the title whereof shall be in the City" (italics by the Court).

Act 270, of 1908, section 1, provides:

"That, whenever the public water plant of the City of New Orleans, now in process of construction by the Sewerage and Water Board, shall have been completed and put into operation, the said Board shall have power, and it shall be its duty, by proper ordinances and regulations to be adopted by it, to require all inhabited premises in the City of New Orleans to be connected with the mains of said system, and to take therefrom, at least such water supply as shall be used on said premises for drinking and domestic purposes, exclusive of sewerage, at rates to be fixed in virtue of the powers heretofore vested in said Board."

Under the rules adopted by the Board, free water is allowed, to the extent of about 11 gallons a day (1000 gallons per quarter), to each permanent occupant in a private residence, hotel, or boarding house \* \* \*, for flushing closets," and the undictated testimony shows the allowance to be a liberal one.

There is no complaint, and no cause of complaint, that the sewers are not free; and it will be seen, from the foregoing, that act 270, of 1908, and the rules of the Board, provide for the "free water", for the "free sewerage system" for which the tax payers stipulated in their petition. Plaintiffs' contention is, that all water which eventually finds its way into the sewers, is the "free water," contemplated by said petition, but that contention is unsupported by the language of the petition, which stipulates, in effect, only that such water as may be required, and used, for the purposes of the sewerage system shall be free, whereas water used for other purposes, such as drinking, cooking, bathing, laundering, watering,

sprinkling, etc., and which goes into the free sewers only after those purposes have been served, and as a means of disposing of it, is no more required or used for the purposes of the sewerage system than is the excremental, or other foul matter, for the disposition of which that system is established.

It appears to be conceded that the Sewerage and Water Board has no present intention of disturbing the cisterns, and plaintiffs' complaint on that subject has not been adverted to in the argument. The trial court did not err in rejecting plaintiff's demands, and the judgment appealed from is affirmed at plaintiff's cost.

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*Syllabus.*

The property tax payers of New Orleans petitioned for the levy of a special tax, to be devoted, among other purposes, "to the construction \* \* \* of a free sewerage system, with free water therefor;" Act 270, of 1908, authorizes the Sewerage and Water Board to fix the rate, to consumers, for such water as they may use "for drinking and domestic purposes, exclusive of sewerage;" and the Board has adopted rules fixing such rate, making a liberal allowance for water required for sewerage purposes, hence, neither the act nor the rules operate to impair the obligations of the contract between the city and the tax payers; for, the petition of the tax payers stipulates, in effect, that only such water as may be required and used for the purposes of the sewerage system shall be free, and water required and used for other purposes, such as drinking, cooking, bathing, laundering, sprinkling, etc., and which goes into the free sewers only after those purposes have been served does not fall within that stipulation.

[Endorsed:] 19,304. N. O. Tax Payers.

100

*Petition for Rehearing.*

Supreme Court of Louisiana.

No. 19304.

NEW ORLEANS TAXPAYERS' PROTECTIVE ASSOCIATION et als.

VS.

SEWERAGE & WATER BOARD OF NEW ORLEANS.

The petition of Dr. J. M. Elliot herein joined by the other plaintiffs in this suit;

Respectfully represents:

That the judgment herein rendered is clearly contrary to law and the evidence.

That this is a clear case of the impairment of an obligation by legislative enactment.

That it is not a question of degree of impairment, but under the



Constitution of the United States the obligations arising out of a contract cannot be impaired at all.

It has been admitted, in the argument that the obligations arising from the petition of the Tax Payers, arise out of a contract. It is useless therefore, to re-argue this part of the case to convince the Court that a contract exists between these Tax Payers, plaintiffs, and the City of New Orleans, constituted as a part of a municipal government of the Sewerage & Water Board is bound by the contract.

Plaintiffs brought to the attention of the Court a communication from the Sewerage & Water Board, wherein they say:

"The whole household outflow, except the overflow of cisterns into gutters, is sewage." R. page 48. The testimony of Mr. Herring is conclusive of the fact that water used for washing purposes, for bath tubs and washstands constitute sewage and that the sewers were built for the purpose of carrying this water away from the community R. page 37. The testimony of Mr. Earl corroborates that of Mr. Herring's "entirely." Both of these engineers had never heard of domestic water previous to the act of 1908.

All the engineering authorities quoted to the Court in the brief are agreed, that all water used for household purposes constitute sewage.

There was no difference of opinion as to the meaning of sewerage when the petition of the Property Tax Payers was sent to the City Council. No such water as domestic water was then known. It was therefore an act of bad faith on the part of the Legislature to have enacted Act No. 270 in the year 1908. And, inasmuch as that act gave a new interpretation to the previous understanding of the Property Tax Payers, that act impaired the obligations of their contract, is contrary to the Constitution of the United States, is null and void and should be so declared by this Court.

Plaintiffs and Appellants therefore pray that a re-hearing of this cause be granted and further pray for general relief, etc.

(Signed)

CHAS. LOUQUE, *Att'y.*

(Endorsed:) No. 19,304. Supreme Court. N. O. Taxpayers Ass. & als. vs. Sewerage & Water Board. Petition for Rehearing. Filed Apl. 28, 1913. (Signed) Paul E. Mortimer, Clerk.

### *Rehearing Refused.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, May 12th, 1913.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:—Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land, and Walter B. Sommerville, Associate Justices.

No. 19304.

NEW ORLEANS TAXPAYERS' PROTECTIVE ASSOCIATION et als.  
vs.

SEWERAGE AND WATER BOARD OF NEW ORLEANS.

By the COURT:

It is ordered that the rehearing applied for in this case be refused.

102 UNITED STATES OF AMERICA,  
*State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing 101 pages contain a full true and complete copy of the proceedings had in the Civil District Court for the parish of Orleans, in a certain suit wherein N. O. Tax Payers' Protective Association, et als., were plaintiffs, and Sewerage & Water Board of New Orleans, was defendant; and, also, of all the proceedings had in this Supreme Court on the appeal taken by said N. O. Tax Payers' Protective Association, et als., which appeal is now on the files thereof, under No. 19,304.

In Testimony Whereof, I have hereunto set my hand, and affixed the seal of said Court, at the city of New Orleans, this the 23rd day of May, Anno Domini, one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,  
*Clerk Supreme Court of Louisiana.*103 UNITED STATES OF AMERICA,  
*State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In Testimony Whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 23rd day of May, Anno Domini, one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,  
*Chief Justice, Supreme Court  
of the State of Louisiana.*

104 UNITED STATES OF AMERICA,  
*State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Joseph A. Breaux is the Chief Justice of said Court, and that his signature to the above certificate is genuine.

In Witness Whereof I hereunto set my hand and seal of the Court aforesaid, at the city of New Orleans, this the 23rd day of May, Anno Domini, one thousand, nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,  
*Clerk Supreme Court of Louisiana.*

105 To the Honorable Joseph A. Breaux, Chief Justice of the  
 Supreme Court of the State of Louisiana:

The petition of the New Orleans Tax Payers' Protective Association, Jean Boubede, Adam Ravannack, V. Hudson, Jos. M. Elliott, M. D., B. G. Carbajal, John Blank, John J. Zollinger, I. Fernandez, John Stolzenthaler, Ernest Care, J. Heinrich, F. Audiffred, Charles E. Ehren, J. F. Elliott, Charles Lepley, Geo. de Reyna, P. S. Esnard, C. Kreher, J. H. Nobles, Wm. Schindler, F. R. Holtinger, Mrs. Alice Fahnert, Rev. C. W. Reeves, Pascal Marchese, Mrs. J. T. Jones, Miss Maud O'Brien, E. P. Bernet, Mrs. E. P. Bernet, Eugene Braquet, Sr., Eugene Braquet, Jr., E. H. Anderson, F. M. J. Clark, W. R. Bailey, John T. Whittaker, John Karcher, E. O. Ducros, J. B. Laplace, Miss Nisida Louque, Mrs. Charles Louque, Miss Bettie Owen; citizens of the State of Louisiana; Respectfully represents:

That the Supreme Court of Louisiana, the highest Court of said State has rendered a final judgment against your petitioners, refusing the relief prayed as against the Sewerage & Water Board of New Orleans; which was for free water for sewerage purposes, including the water used for household cleansing purposes, such as bath tubs, washstands, lavatories and kitchen sinks, the whole of which has always been considered sewage;

That in said proceedings was drawn in question the impairment of the obligations arising from the contract entered into, as averred in the petition, between your petitioners, who are all tax payers and the municipality of New Orleans, by reason of the passage of Act No. 270 of 1908, which undertook to change the designation of sewerage water and give it the name of domestic water;

That such change by the Legislature of Louisiana was contrary to the Constitution of the United States, and null and void;

Your Petitioners therefore pray that a writ of error be granted from the final judgment, rendered by the Supreme Court of Louisiana, within thirty days from the filing of this petition on petitioners giving bond in such sums as may be fixed by your Honor, con-

106      ditioned as the law directs and petitioners pray that the Sewerage & Water Board be cited according to law and they pray for general relief, etc.

CHS. LOUQUE, *Att'y.*

*Order.*

Let, as prayed for, a writ of error be granted without supersedeas from the judgment herein rendered on petitioners giving bond conditioned as the law directs, in the sum of seven hundred & fifty dollars,—said writ of error to be returnable to the Supreme Court of the United States, within thirty days from this date.

New Orleans, May 19th, 1913

JOS. A. BREAUX,

*Chief Justice Supreme Court of Louisiana.*

[Endorsed:] No. 19,304. Supreme Court Louisiana. New Orleans Tax Payers' Protective Ass'n et als., Plaintiffs-in-error, vs. Sewerage & Water Board of New Orleans, Defendant-in-error. Petition for writ of Error. Filed May 19th, 1913. Paul E. Mortimer, Clerk.

107

*Assignment of Errors.*

To the Honorable the Supreme Court of the United States:

The New Orleans Tax Payers' Protective Association, Jean Boubede, Adam Ravannack, V. Hudson, Jos. M. Elliott, M. D., B. G. Carbajal, John Blank, John J. Zollinger, I. Fernandez, John Stolzenthaler, Ernest Care, J. Heinrich, F. Audiffred, Charles E. Ehren, Charles Lepley, Geo. de Reyna, P. S. Esnard, C. Kreher, J. H. Nobles, Wm. Schindler, F. R. Holtinger, Mrs. Alice Fahnert, Rev. C. W. Reeves, Pascal Marchese, Mrs. J. T. Jones, Miss Maud O'Brien, E. P. Bernet, Mrs. E. P. Bernet, Eugene Braquet, Sr., Eugene Braquet, Jr., E. H. Anderson, F. M. J. Clark, W. R. Bailey, John T. Whittaker, John Karcher, E. O. Ducros, J. B. Laplace, Miss Nisida Louque, Mrs. Charles Louque, Miss Bettie Owen; now assign as error apparent on the face of the Record:

1st. That the proceedings by virtue of which a special tax of two mills for water and sewerage was levied, based on certain conditions imposed by the tax-payers, form a real and true contract, imposing valid obligations on the city authorities.

2nd. That the Legislature was without power to change or alter the conditions so imposed by the contract, and by so doing in 1908, under the terms of Act No. 270, impaired the obligations of the said contract.

3rd. That in 1899 when the taxpayers of New Orleans agreed to tax themselves for a free system of sewerage and free water therefor, the common and usual definition of sewerage is to be accepted as the guide by which the rights of the parties are to be determined; that the change of said common and accepted understanding impaired the obligations of said contract.

4th. That the uncontradicted evidence shows that sewerage water included domestic water, therefore the Legislature was without power to change or alter the common understanding, by so doing, it violated the Constitution of the United States, which forbids any state from enacting any law which impairs the obligations of a contract.

Wherefore, Plaintiffs in error, the New Orleans Tax Pay-  
 108 ers' Protective Association, Jean Boubede, Adam Ravannack,  
 V. Hudson, Jos. M. Elliott, M. D., B. G. Cabajal, John  
 Blank, John J. Zollinger, I. Fernandez, John Stolzenthaller, Ernest  
 Care, J. Heinrich, F. Audiffred, Charles E. Ehren, J. F. Elliott,  
 Charles Lepley, Geo. de Reyna, P. S. Esnard, C. Kreher, J. H.  
 Nobles, Wm. Schindler, F. R. Holtinger, Mrs. Alice Fahner, Rev.  
 C. W. Reeves, Pascal Marchese, Mrs. J. T. Jones, Miss Maud O'Brien,  
 E. P. Bernet, Mrs. E. P. Bernet, Eugene Braquet, Sr., Eugene Bra-  
 quet, Jr., E. H. Anderson, F. M. J. Clark, W. R. Bailey, John T.  
 Whittaker, John Karcher, E. O. Ducros, J. B. Laplace, Miss Nisida  
 Loque, Mrs. Charles Louque, Miss Bettie Owen, pray that the judg-  
 ment rendered by the Civil District Court of New Orleans and  
 affirmed by the Supreme Court of Louisiana be reversed and an-  
 nulled and that judgment be rendered in favor of plaintiffs decre-  
 ing that they are entitled to free water used for cleansing purposes  
 in the household and they pray for general relief, etc.

CHS. LOUQUE, *Att'y.*

[Endorsed:] No. 19,304 Supreme Court Louisiana. New Or-  
 leans Tax Payers' Protective Ass'n et als., Plaintiffs-in-error. As-  
 Sewerage & Water Board of New Orleans, defendant-in-error. As-  
 signment of errors. Filed May 19th, 1910. Paul E. Mortimer,  
 Clerk.

109 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the  
 Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of  
 the judgment of a plea which is in the said Court, before you, or  
 some of you, being the highest court of law or equity of the said  
 State in which a decision could be had in the said suit between The  
 New Orleans Tax Payers Protective Association, Jean Boubede, A.  
 Ravannack, V. Hudson and others, Plaintiffs, against The Sewerage  
 and Water Board of New Orleans, defendants, No. 19304 of said  
 Court, wherein was drawn in question the validity of a treaty or  
 statute of, or an authority exercised under, the United States, and  
 the decision was against their validity; or wherein was drawn in  
 question the validity of a statute of, or an authority exercised under,  
 said State, on the ground of their being repugnant to the Constitu-  
 tion, treaties or laws of the United States, and the decision was in  
 favor of such their validity; or wherein was drawn in question the  
 construction of the clause of the Constitution, or of a treaty,  
 110 or statute of, or commission held under the United States,  
 and the decision was against the title, right, privilege, or

exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Plaintiffs as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable, Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 19th day of May, in the year of our Lord one thousand nine hundred and thirteen.

[Seal U. S. District Court for the Eastern Dist. of La.,  
N. O. Div.]

H. J. CARTER,

*Clerk of the District Court of the United States  
for the Eastern District of Louisiana.*

Allowed by

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUUX,

*Chief Justice Supreme Court of Louisiana.*

[Endorsed:] No. 19304. Supreme Court of La. New Orleans Tax Payers Protective Ass'n et als., Plaintiffs-in-error, versus Sewerage & Water Board of New Orleans, Defendant-in-error. Writ of Error. Filed May 19, 1913. Paul E. Mortimer, Clerk.

111

*Bond for Writ of Error.*

Supreme Court of the State of Louisiana.

No. 19304.

NEW ORLEANS TAX PAYERS PROTECTIVE ASSOCIATION

VS.

SEWERAGE & WATER BOARD OF NEW ORLEANS.

Know all men by these presents, that we, the New Orleans Tax Payers Protective Association, Jean Boubede, Adam Ravannack, V. Hudson, Jos. M. Elliott, M. D., B. G. Carbajal, John Blank, John J. Zollinger, I. Fernandez, John Stolzenthaler, Ernest Care, J. Heinrich, F. Audiffred, Charles E. Ehren, J. F. Elliott, Charles Lepley, Geo. De Reyna, P. S. Esnard, C. Kreher, J. H. Nobles, Wm.



Schindler, F. R. Holtinger, Mrs. Alice Fahner, Rev. C. W. Reeves, Pascal Marchese, Mrs. J. T. Jones, Miss Maud O'Brien, E. P. Bernet, Mrs. E. P. Bernet, Eugene Braquet, Sr., Eugene Braquet, Jr., E. H. Anderson, F. M. J. Clark, W. R. Bailey, John T. Whitaker, John Karcher, E. O. Ducros, J. B. Laplace, Miss Nisida Louque, Mrs. Charles Louque, Miss Bettie Owen; and James A. Brennan of the City of New Orleans, are held and firmly bound unto the Sewerage & Water Board of New Orleans, in the sum of Seven Hundred and Fifty dollars, to be paid to the said Sewerage & Water Board of New Orleans, or their successors in office. To which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Whereas, the above named principals have prosecuted a writ of error to the Supreme Court of the United States from the Supreme Court of the State of Louisiana, to reverse the judgment rendered in the above entitled action, by the Supreme Court of Louisiana.

112 Now, therefore, the condition of this obligation is such, that if the above named principals shall prosecute their said writ of error to effect and answer all costs, if they shall fail to make good their plea; then this obligation shall be void; otherwise to remain in full force and virtue.

For above named principals,

(Signed)

(Signed)

CHARLES LOUQUE, *Att'y.*

JAS. A. BRENNAN.

Jas. A. Brennan being duly sworn says that all his debts and liabilities being paid he is worth the sum of Seven Hundred and Fifty Dollars, that he resides in the Parish of Orleans.

(Signed)

JAS. A. BRENNAN.

Sworn to and subscribed before me on this 19th day of May, 1913.

(Signed)

[SEAL.]

JOHN A. KLOTZ,

*Deputy Clerk Supreme Court of Louisiana.*

Accepted and approved.

New Orleans May 19th, 1913.

(Signed)

JOS. A. BREAUX,

*Chief Justice of the Supreme Court of Louisiana.*

(Endorsed) No. 19,304. Supreme Court of Louisiana. N. O. Tax Payers Protective Ass'n et als. vs. Sewerage & Water Board of New Orleans. Bond. Filed May 19, 1913. (Signed) Paul E. Mortimer, Clerk.

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*Certificate of Lodgment.*

I, Paul E. Mortimer, clerk of the Supreme Court of the State of Louisiana do hereby certify that there was lodged with me as such clerk on the 19th day of May, in the matter of the New Orleans

Tax Payers Protective Association et al. plaintiffs-in-error versus the Sewerage & Water Board of New Orleans, defendant-in-error:

1st. The original petition for writ of error, as herein set forth.

2nd. The original assignment of errors, as herein set forth.

3rd. The original writ of error, as herein set forth.

4th. The copy of the writ of error lodged in my office by the plaintiffs-in-error for the defendants-in-error.

5th. Bond for writ of error, copy of which is herein set forth.

In testimony whereof, I hereunto set my hand and affix the seal of said Court, at the city of New Orleans, this the 23rd day of May, A. D. 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,  
*Clerk of the Supreme Court  
of the State of Louisiana.*

#### 114 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the Sewerage and Water Board of New Orleans, through its proper officers, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein The New Orleans Taxpayers, Jean Beoubebe, A. Ravannack and others are plaintiffs and the Sewerage and Water Board of New Orleans are defendants, No. 19304 of the docket of the Supreme Court of Louisiana, to show cause, if any there be, why the judgment rendered against the said Plaintiffs dismissing their petition as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of May in the year of our Lord one thousand nine hundred and thirteen.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,  
*Chief Justice of the Supreme Court  
of the State of Louisiana.*

[Endorsed:] Martin Behrman, Mayor, Villa, 5/21. R. Supreme Court of the State of Louisiana. No. 19304. New Orleans Taxpayers Protective Association et als., Plaintiffs-in-error, vs. Sewerage & Water Board of New Orleans, Defendant-in-error. Citation.

*Sheriff's Return.*

Received Tuesday, May 20, 1913 and on the 21st day of May, 1913 I served a copy of the within Citation of Appeal to the United States Supreme Court on The Sewerage and Water Board of New Orleans, defendant-in-error by personal service on Hon. Martin Behrman, Mayor of the City of New Orleans its President. Returned same day.

JOHN E. VILLA,  
*Deputy Civil Sheriff, Parish of  
Orleans, State of Louisiana.*

John Edward Villa, Deputy Civil Sheriff, Parish of Orleans — of Louisiana being sworn deposes and says that he made a personal service of copy of the within Citation on Hon. Martin Behrman, Mayor of the City of New Orleans, President of The Sewerage and Water Board of New Orleans as stated in the above return.

JOHN. E. VILLA.

Sworn to & subscribed before me, this 23d day of May, A. D. 1913.

PAUL E. MORTIMER,  
*Clerk Supreme Court of Louisiana.*

[Seal Supreme Court of the State of Louisiana.]

115

*Return to Writ.*

UNITED STATES OF AMERICA,  
*State of Louisiana:*

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Louisiana, in the city of New Orleans, this the 23rd day of May, 1913.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,  
*Clerk of the Supreme Court  
of the State of Louisiana.*

Endorsed on cover: File No. 23,744. Louisiana Supreme Court. Term No. 192. The New Orleans Tax Payers Protective Association et al., plaintiffs in error, vs. The Sewerage and Water Board of New Orleans. Filed June 9th, 1913. File No. 23,744.

# **Supreme Court of the United States.**

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**No. 192.**

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**OCTOBER TERM, 1914**

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**THE NEW ORLEANS TAX PAYERS**

**versus**

**THE SEWERAGE AND WATER BOARD OF NEW  
ORLEANS.**

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**ERROR FROM THE SUPREME COURT OF  
LOUISIANA.**

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**BRIEF ON BEHALF OF PLAINTIFFS WHO ARE ALSO  
PLAINTIFFS IN ERROR.**

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The object of this suit is to set aside an act of the Legislature of the State of Louisiana which impairs the obligations of a contract entered into between the Tax payers of New Orleans and the City.

The Supreme Court of Louisiana having maintained the validity of the act, contrary to the contention of Plaintiffs, a writ of error was applied for and granted by the Supreme Court of Louisiana, returnable to this Hon. Court.

The Court maintained, that the petition of the property tax payers did not ask for free water for themselves but only for the system. This conclusion is not tenable.

The assignment of Errors is as follows:

“1st. That the proceedings by virtue of which a special tax of two mills for water and Sewerage was levied, based on certain conditions imposed by the tax-payers, form a real and true contract, imposing valid obligations on the City authorities.

2nd. That the Legislature was without power to change or alter the conditions so imposed by the contract, and by so doing in 1908, under the terms of Act No. 270, impaired the obligations of said contract.

3rd. That in 1899 when the tax payers of New Orleans agreed to tax themselves, ‘for a free System of Sewerage and free Water therefor’, the common and usual definition of Sewerage, is to be accepted as the guide by which the rights of the parties are to be determined; that the change of said common and accepted understanding impaired the obligations of said contract.

4th. That the uncontradicted evidence shows that Sewerage Water included ‘domestic’ water, therefore the Legislature was without power to change or alter this common understanding; by so doing, it violated the Constitution of the United States which forbids any State from enacting any law which impair the obligations of a contract.”—R. 85-86.

The facts are as follows:

The tax payers of New Orleans, petitioned the City Council to levy a tax of two mills for a “free Sewerage System with free water therefor,” on certain terms and conditions. The petition was presented in April, 1899.

The matter was carried out in accordance with the petition until the time arrived to put the system in opera-

tion. The tax has been continuously and regularly paid, but when came the time for the taxpayers to reap the benefits of their contract and a return for their expenditure, the Legislature interfered and divided the water to be used for sewerage into two classes—the sewerage water to be used for the cleaning of the closets, which was to be allowed free, and continued to be called sewerage water, and “domestic” water, by which name all other water used for household purposes was designated.—

The contention of plaintiffs, who are all taxpayers, is that no such designation as “domestic water” was ever known before the passage of the act, that “domestic water” is sewerage water and that they are entitled to have their contract carried out, and to have the act of the Legislature, which impairs the obligations of their contract, declared unconstitutional; they are entitled to “free sewerage and free water therefor”, which includes all water used in the household for cleansing purposes, in accordance with the terms of their contract.

Nearly forty taxpayers join in the suit. It is admitted that each one of the plaintiffs, if put on the witness stand, would testify that he is a taxpayer. (*Rec.*, p. 2).

The proceedings to arrive at the levy of the special two-mill tax are to be found at *R. 9 to 21*.—

They are now printed in full to facilitate the Court in the examination of this cause. The petition filed in this suit recites:

“That in April, 1899, the taxpayers in the City of New Orleans presented to the Mayor and the City Council of New Orleans a petition to levy upon all the property of this city a special tax of two mills per annum for forty three years, beginning with and including the year 1899, for the following purposes:



"First. To acquire title by the city by construction or purchase, or both, to a system of waterworks, to the extension thereof throughout the city, inclusive of the Fifth District; and the purification of the water supply therefrom.

"Second. To the construction throughout the city, inclusive of the Fifth District, *of a free sewerage system, with free water therefor*, the title whereof shall be in the city.

"That said petition prayed for an election to vote upon said petition and to obtain legislative and constitutional authority to carry the same into effect. R. 9.

"That the council adopted ordinance 15,214, council series approved April 26, 1899, ordered a special election to be held, as provided in Article 232 of the Constitution of this State and of Act 131 of 1898, for the purpose of submitting to the property taxpayers of the City of New Orleans, entitled to vote at such election, the proposition to levy on all the property in the City of New Orleans the special tax mentioned in the petition, on the terms and conditions set forth therein. R. 10.

"That the election was duly held and, the majority of the taxpayers voting at said election, duly carried the tax. Thereupon the Secretary of State announced 'that the special tax of two mills for forty-three years, to be devoted to water, sewerage and drainage under the terms and conditions set forth in the taxpayers' petition', had been carried.

"That the City Council then adopted Ordinance 15,391, council series, levying the special tax in accordance with the terms and conditions of the petition of the property taxpayers. R. 11-21.

"That a special session of the Legislature was convened and Act 6 of 1899 was adopted, the preamble of which recited the terms and conditions of the petition of the property taxpayers by virtue of which the tax was levied.

"A constitutional amendment was duly proposed, which ratified and approved Ordinance 15,391, council series, with the further declaration that its validity shall never be questioned.

"That all of said proceedings, commencing with the petition of the property taxpayers and ending with the ratification by the constitutional amendment of Ordinance 15,391, constitute a binding and lawful contract between the property taxpayers and the City of New Orleans, which, under the Constitution of the United States, cannot be impaired by the subsequent state Legislature.

"That petitioners are therefore entitled under their contract to a free sewerage system, with free water therefor.

"That free sewerage water means 'the water which is used by the taxpayers in the various receptacles in their houses, used for cleansing purposes, and this includes domestic water'.

"That all water which is discharged into the sewers is sewerage water, and is to be free to the taxpayers.

"That a free sewerage system, with free water therefor, could not be operated if only the closet water was to be connected to the sewers, for want of sufficient flushing water.

"The petition further alleges that the Legislature of 1908, under Act No. 270, impaired the obligations of the aforesaid contract by adopting a new definition of sewerage water and naming a portion thereof domestic water, and giving power and authority to the Sewerage and Water Board to charge for domestic water, and giving to the said board a lien and privilege on their property for any water consumed or used therein, although the same be sewerage water.

"That the Sewerage and Water Board have fixed water rates which are illegal, and fixing penalties for the nonpayment of same.

"That for a period of ten years (when the petition was filed), now fifteen years, they have been paying their sewerage and water tax of two mills without benefit to themselves. And now that they are about to obtain the benefit of their previous expenditures, they are denied free water, on the ground that they must provide a revenue sufficient to pay the expenses of running the sewerage and water plant.

"That said plea is not true, because under Section 28 of the Act of 1899, No. 6, it is specially provided:

"That the City of New Orleans shall annually, in her budget of expenses, provide out of her alimony, by proper appropriation, all the funds necessary and proper over and above the receipts of the said board for water rates; to maintain and operate in an efficient manner the said public system of sewerage and the said public system of waterworks, inclusive of interest and sinking funds of any assumed mortgage bonds, and the said board shall in the first week in November present to the council an estimate of the amount requisite for these purposes for the following year. No portion of the proceeds of said public improvement bonds, or of the said taxes, shall ever be applied to the maintenance and operation of said public system of sewerage, water and drainage, but they shall be used for construction only. (1899, p. 27.) See *Appendix*.

"That the City Council has made no such appropriation and it would be unfair to compel your petitioners who have built the system of sewerage and waterworks to furnish free water to the City of New Orleans, when heretofore she was paying not less than \$165,000 yearly to the old waterworks for water used by her, which amount should be sufficient to maintain and operate the water and sewerage plant, if run on an economical basis.

"That the Sewerage and Water Board is entitled to charge for all water which does not go in the sewers, such as water used by steam mills, livery stables, dairies, etc., water used to sprinkle the gardens and

the like, and if the revenue derived from such sources is not sufficient to pay the expenses of the board, then the City Council is to appropriate out of her alimony to maintain and operate in an efficient manner the said system of sewerage and waterworks."

The part of the petition relative to the cisterns is withdrawn for the present, inasmuch as the Sewerage and Water Board have adopted no ordinance for their destruction.

The prayer of the petition is that Act No. 270 of 1908 be declared unconstitutional null and void, and that petitioners be declared entitled to free water. (*Rec.*, pp. 1-7.)

The answer of the Sewerage and Water Board is a simple general denial. (*Rec.*, p. 10.)

The necessity of bringing all the details of the proceedings for the levy of the special tax before the Court is to show that the rights of the plaintiffs arise under a contract, and that the co-relative obligations are protected from impairment by the Legislature, under the Constitution of the United States.

Inasmuch as the obligations of the Sewerage and Water Board flow from a contract, the only question is whether free sewerage water includes domestic water? This question will be discussed after we have shown to the Court that plaintiffs' rights arise from a contract.

The petition of the property taxpayers is as follows: (See 109 *La.* 852.)

"To the Honorable the Mayor and Council of the City of New Orleans;

"The undersigned property taxpayers of the City of New Orleans hereby petition you to levy upon all the property of this city a special tax of two mills per annum for forty-three years, beginning with and in-

cluding the year 1899. The proceeds thereof shall be applied in such ratio as may be required for the following purposes of permanent public improvement, to-wit:

"(1) To acquire title by the city, by construction or purchase, or both, to a system of waterworks; to the extension thereof throughout the city, inclusive of the Fifth District; and to the purification of the water supply therefrom.

"(2) To the construction throughout the city, inclusive of the Fifth District, of a free sewerage system, with free water therefor; the title whereof shall be in the city.

"(3) To the completion of the public drainage system of the City of New Orleans, inclusive of the Fifth District, now in process of construction.

"We further petition that the council will as soon as possible, after this tax is voted, obtain legislative and constitutional authority to capitalize, on the basis of the present assessment, the whole proceeds of this special tax, added to the proceeds, on the same basis, of one-half the surplus of the present one per cent debt tax (already dedicated by law to drainage purposes), by issuing bonds dated July 1, 1900, having fifty years to run, bearing not more than four per cent interest, and to be sold only as needed, at not less than par and accrued interest, so that all these works may be completed immediately, and that the interest on said bonds after 1942, and the whole principal thereof, shall be paid after said date by the continuation thereafter of the present one per cent debt tax.

"We further petition, that if the assessed value of the city shall in the future increase to such a figure as to make one-half the surplus of said one per cent debt tax sufficient to pay the whole or the larger portion of the interest on the bonds so issued, then that in all such years there shall be a corresponding diminution in the amount of such special tax.

"We further petition that the issuance and sale of said bonds shall be placed under the supervision and control of the Board of Liquidation of the city debt, and that the proceeds of said tax shall be paid over as collected to said board.

"We further petition that when said special tax is voted the council will organize a Sewerage and Water Board, to be composed of the Drainage Commissioners and a taxpayer from each of the seven municipal districts, to be appointed by the Mayor, with the consent of the council, or elected by the property taxpayer, for terms not exceeding twelve years, for the purpose of constructing, controlling, maintaining and operating said water and sewerage systems.

"We further petition that at the election called to take a vote on said tax the council will submit to the property taxpayers the question as to how said seven commissioners shall be named, whether by election by the property taxpayers or by appointment by the Mayor, with the consent of the council; and if the majority in number and amount of those voting at said election shall select either of said methods, then the council shall embody the method so selected in the ordinance levying the tax, and seek legislative and constitutional authority for such method of election; and in case the majority, both in number and amount, voting at such election do not select either one of said methods, then the Mayor shall appoint said commissioners, with the approval of the council, in such manner that the term of one commissioner shall expire every two years; and until such board can be fully organized we petition that the present Drainage Commission shall perform the duties of said board.

"We further petition, that the contract for the above work shall be let in such manner as to cover the whole city, the Fifth District included, at the same time, and be prosecuted in such manner that it shall be completed throughout the city, the Fifth District included, as far as possible at the same time.



"We further petition, that if the city cannot get proper legislative and constitutional authority to issue the bonds aforesaid prior to January 1, 1901, then the said special tax shall hereafter cease and determine, and the proceeds of said tax for the years 1899 and 1900 shall be paid over to the Drainage Commission, to be used for drainage purposes." R. 9.

On receiving said petition, duly signed by the taxpayers, the City Council adopted the following ordinance, which is numbered 15,214, council series, approved April 26, 1899; which ordinance is in the following words:

Section I. Be it ordained by the Common Council of the City of New Orleans that a special election is hereby ordered to be held as "provided in Article 232 of the Constitution of the State of Louisiana, and Act No. 131 of 1898," the date of which is to be fixed by proclamation of the Mayor, not sooner, however, than thirty days after the official adoption of this ordinance, and that at said election there shall be and is hereby submitted to the property taxpayers of the City of New Orleans entitled to vote at such election under the Constitution and laws of this State the proposition to levy on all property in the City of New Orleans a special tax of two mills on the dollar for forty-three years, beginning with and including the year 1899, for water, sewerage and drainage purposes, on the terms and conditions set forth in the foregoing petition.

Sec. II. Be it further ordained, etc., that there shall also be submitted to the property taxpayers voting at said election the question as to how the seven commissioners, one from each of the seven municipal districts, who are to be members of the Sewerage and Water Board, shall be chosen—whether by election by the property taxpayers or by appointment by the Mayor, with the consent of the council. R. 10.

Sec. III. Be it further ordained, etc., that the official ballot to be used at said election shall be printed as follows:

**"OFFICIAL BALLOT.**

"For the special tax of two mills for forty-three years, to be devoted to water, sewerage and drainage, under the terms and conditions set forth in the property taxpayers' petition.

"Against the special tax of two mills for forty-three years to be devoted to water, sewerage and drainage, under the terms and conditions set forth in the property taxpayers' petition.

"For the appointment of the seven commissioners by the Mayor, with the consent of the council."

"For the election of the seven commissioners by the property taxpayers.

"Every voter shall indicate his or her vote by stamping with an official stamp the proposition he votes for." R. 10.

When the tax had been voted and carried, the Legislature, in the extra session of 1899, adopted Act No. 6, entitled:

"An act to make effective the vote and levy of the special tax by the property taxpayers of the City of New Orleans for water, sewerage and drainage purposes," etc.

See Acts 1899 E. S., printed in appendix.

The preamble of said act recites:

"Whereas on June 6, 1899, the property taxpayers of the City of New Orleans, in due form of law, voted a special tax of two mills on the dollar for forty-three years, beginning with the year 1899, upon certain conditions set forth in the property taxpayers' petition, made the basis of said election, the proceeds

whereof are to be exclusively devoted in such ratio as may be required to the following purposes of public improvement, to-wit:

"(1) To acquiring title by the city, by construction or purchase, or both, to a system of waterworks; to the extension thereof throughout the city, inclusive of the Fifth District; and to the purification of the water supply therefrom.

"(2) To the construction throughout the city, inclusive of the Fifth District, of a free sewerage system, with free water therefor; the title whereof shall be in the city.

"(3) To the completion of the public drainage system of the City of New Orleans, inclusive of the Fifth District, now in process of construction.

"And whereas the Common Council of the City of New Orleans did by ordinance 15,391, council series, approved June 22, 1899, levy the said tax, upon the said conditions, and provide for the establishment of said public systems of sewerage and water.

And whereas the said conditions so imposed upon the said tax require legislative action to make them thoroughly effective, so that the purposes of said tax levy may be fully carried out."

The act then provides in detail for the sale of the bonds to be issued by it, the disposition of the proceeds, the conduct of the affairs of the board and other details; then it provides by Section 21:

"That the said board shall have power to fix the rates to be charged private consumers of water, and to collect the same from all persons who use water (except for sewerage purposes only) from the public water supply of the City of New Orleans, except the City of New Orleans and her public institutions, such as jails, schools, etc., the Charity Hospital, the Touro Infirmary, the House of Good Shepherd, Soldiers' Home, Hotel Dieu, the Louisiana

Retreat, the Southern University, and all orphan asylums and homes for aged and infirm. These charges shall be based, as far as possible, upon the actual amount of water consumed, shall be equal and uniform for each grade or class of customers, and shall be framed so as to cover only the actual cost of the maintenance of the said public water system, inclusive of interest and sinking funds of any assumed mortgage bonds on said property, and of the furnishing of the public and private water supply. Said board shall have further power to make reasonable rules and regulations for the use and consumption by such pay customers, and by such free consumers of the water supply furnished them, and to prevent the obstruction of, interference with or damage to the pipes, mains and other appurtenances of said water system, and to any violation of such reasonable rules and regulations so established by said board and duly promulgated in the official journal, shall be punished by a fine not exceeding \$25 for each offence, or by imprisonment not exceeding thirty days for each offence, or by both, in the discretion of the Court having jurisdiction of the offence."

The following sections provide for the disposition of the funds of the board, the giving out of contracts, etc.:

Section 28 provides:

"That the City of New Orleans shall annually, in her budget of expenses, provide out of her alimony, by proper appropriation, all the funds necessary and proper, over and above the receipts of said board for water rates, to maintain and operate in an efficient manner the said public system of sewerage and the said public system of waterworks, inclusive of interest and sinking funds of any assumed mortgage bonds thereon, and the said board shall in the first week in November of each year present to the council an estimate of the amount requisite for these purposes for the following year. No portion of the proceeds of said public improvement bonds, or of

said taxes, shall ever be applied to the maintenance and operation of said public system of sewerage, water and drainage, but they shall be used for construction purposes only."

Section 35 provides:

"That as it is proposed to have this act ratified by an amendment to the Constitution, it is hereby specially declared to be the intent of this act, and of said ratifying constitutional amendment, that the General Assembly reserves the right and power to amend this act in any respect, not violative of the conditions upon which the said special tax was voted by the property taxpayers of the City of New Orleans, and not impairing the vested rights of the contract rights of the holders of the bonds issued under its provisions."

1899, Act No. 6, printed in appendix.

The constitutional amendment proposed at the same extra session of 1899, and subsequently adopted, provides:

"That the special tax for public improvements, voted by the property taxpayers of the City of New Orleans on June 6, 1899, and levied by the City of New Orleans, by Ordinance 15,391, approved June 22, 1899, is hereby ratified."

1899, *Ex.*, p. 6, printed in appendix.

These various steps having been successfully carried out, the special tax of two mills was irrevocably fixed, and the taxpayers had successfully saddled on themselves the obligation to pay the tax. No one will contend that, if the tax was binding on the taxpayers, that no rights were acquired by the taxpayers.

The Supreme Court of Louisiana in the case of *State vs. Kohnke*, reported in 109 *La.*, pp. 837 to 874, discussed the obligations resulting from the proceedings, commenc-

ing with the petition of the taxpayers. They found that the terms and conditions contained in the petition formed a part of the contract, and they maintained the rights of the taxpayers to have their contract remain unimpaired. They said that the Legislature had no right to modify that contract, declared *Act No. 111 of 1902* unconstitutional, and maintained the organization of the Sewerage and Water Board, as originally contemplated.

We are now seeking to have another condition of this same contract maintained in its full integrity, and to have *Act No. 270 of 1908* declared null and void, as impairing the obligations of our contract.

We desire to call your attention to the fact that under the original act the Sewerage and Water Board was given full authority under Section 21 "to fix the rates to be charged private consumers of water, and to collect the same from all persons who use water (except for sewerage purposes only)", and if the definition of domestic water was not intended to change the meaning of "sewerage water," then there was no occasion to pass the act. Therefore the question before the Court is what was the accepted meaning of "free sewerage water."

Under *Act No. 270 of 1908, Sec. 1*, the Sewerage and Water Board is given power to require all inhabited premises in the City of New Orleans to be connected with the mains of the waterworks and to take therefrom at least such water supply as shall be used on said premises for drinking and domestic purposes, exclusive of sewerage, at rates to be fixed, in virtue of the powers heretofore vested in said board." (1908, p. 397.)

It must be admitted that if domestic water, as intended to be contradistinguished with sewerage water, is included



in sewerage water, then the contract by which the plaintiffs are to obtain free water has been violated and the act is to be declared unconstitutional.

We have examined, on behalf of plaintiffs, Rudolph Hering, the consulting engineer of the Sewerage and Water Board, one of the engineers who designed the sewerage system.

Mr. Hering testified:

That he is the author of the article which has been published in the Encyclopedia Americana, published by the Scientific American in 1903, on "Sanitary Engineering." (*Rec.*, p. 46.)

"Q. Will you kindly state, Mr. Hering, in devising the system of sewerage we have, what was intended to be carried into the system; the underground pipes, what kind of water I mean?

"A. All water coming from houses which had been fouled by its use, and also a certain amount of subsoil drainage water, which would naturally get into the pipes and lower the ground water level of the city.

"Q. Would your definition include waters used for washing purposes, for bath tubs and washstands?

"A. Yes, that is a definition as to what the sewers were built for; that is what I understand." (*Rec.*, p. 33.)

It was admitted that Mr. Hering is an expert in sanitary engineering. *Rec.*, p. 31.

"Q. Mr. Hering, I want to ask you another question: Until I had spoken to you on the subject yesterday, with regard to domestic water, did you ever hear of such an expression in relation to sewerage?

"A. No, sir." *Rec.*, p. 37, 38.

The article written by Mr. Hering for the Encyclopedia Americana of the Scientific American was offered in evidence. The same is to be found in Vol. XIV, verbo "Sanitary Engineering." This article is printed in full R. 42 to 50.

"A sewerage system has for its purpose the collection and removal of the foul waters of a community. The term 'sewerage' is applied to the system of collecting pipes and underground channels. It begins in the houses at the various receptacles where water is used for cleansing purposes, extends through the streets and ends at one or more places where this dirty water, which we call sewage, is finally discharged." R. 46.

So that when the taxpayers in 1899 petitioned for a free sewerage system, with free water therefor, they intended to have "a system of collecting pipes and underground channels, which begins in the houses at the various receptacles where water is used for cleansing purposes.

The restriction of the contract contained in the Act of 1908 complained of, by allowing the Sewerage Board to charge for domestic water which Mr. Hering explained included water used for washing purposes, bath tubs and wash stands, was contrary to good faith, was a perversion of a well-known definition of sewerage, which impaired the obligations of the contract entered into by the taxpayers.

The interpretation, given by the Supreme Court of Louisiana, puts the taxpayers in the absurd position of voting a tax of two mills for forty-two years without any benefit to themselves. The Court decides that the tax-payers are entitled to no free water; that they use no sewerage water. This is in direct opposition to section 20 of the Act of 1899, No. 6, adopted as a constitutional amendment and forming an integral part of the contract.

The said Board can "compel all premises in the City of New Orleans to be connected to said system, and to compel the closing and discontinuance of all other sewers, and all vaults, cess-pools, privies, water closets, urinals, *foul water drains*, and outlets for any kind of fluid material whatever." (Copied in full in appendix).

The Sewerage and Water Board examined on their behalf Mr. George G. Earle. Mr. Earle has been in the employ of the Sewerage and Water Board from the beginning, and is today their superintendent. He testified on his examination in chief:

"Q. Have you read the testimony of Mr. Hering, a witness in this case?

"A. I heard it read here.

"Q. Do you agree with or do you differ from Mr. Hering in his testimony?

"A. Mr. Hering's testimony is correct, entirely." (Rec., p. 27.)

On cross-examination by Mr. Louque:

"Q. Will you please state whether or not before this act of the Legislature of 1908 you had found out anything about "domestic water" as used in the testimony of Mr. Hering?

"A. I had never heard the word used, and I do not think there is any condition paralleling that in New Orleans where there is any stipulation in the law dividing the water between free water for sewerage purposes, which we find on reading the law, and other domestic purposes.

"Q. Before the Act of 1908 came into operation what would you consider water used for bath purposes, after it had been used?

"A. All fouled water I regard as sewage. In my opinion all fouled water, even street water if

it is fouled, or contains the excrementitious matter from animals, and so on, is decidedly sewage." (*Rec.*, p. 27.)

The testimony of these two experts, both sanitary engineers of great experience, shows conclusively that prior to 1908 sewerage water included domestic water.

But to remove all doubt as to the intention of the parties, we bring to your notice a reply of the Sewerage and Water Board addressed to a request for water works by the Taxpayers' Protective Association in 1905, wherein they say:

"The whole household outflow, except the overflow of cisterns into gutters, is sewage." (*Rec.*, p. 48.)

This record contains no evidence to contradict the testimony of the experts.

The Encyclopedia Brittanica, v. 21, published in 1887, contains the definition:

"Sewerage is the process of systematically collecting and removing refuse from dwellings. The matter to be dealt with may conveniently be classified as made up of four parts: 1st, dust, ashes, kitchen waste, and solid matters generally, other than solid excreta; 2nd, excreta, consisting of urine and faeces; 3rd, slop water, or the discharge from sinks, basins, baths, and the waste water of industrial processes; 4th, surface water due to rainfall. \* \* \* Speedy removal or destruction of excremental sewage is therefore imperative. \* \* \* It may be conveyed away in sewers by gravitation, after the addition of a relatively large volume of water. This last mode of disposal is termed the water carriage system of sewerage. It is the plan now usually adopted in towns which have a sufficient water supply, and it is probably the mode which best meets the needs of any large community. The sewers which carry

the diluted excreta serve also to take slop water, and may or may not be used to remove the surface water due to rainfall."

Encyclopedia Britannica, v. 21, fo. 746, verbo sewerage.

Much valuable information is contained in this article, accompanied by cuts showing the mode of building the sewers, the common water trap, and the mode of connecting the various receptacles used for household purposes. The illustration at page 751 shows house connection to: 1st, a trap or seal; 2nd, a ventilated grease box; 3d, a range of tubs; 4th, a scullery sink; 5th, a washstand basin in the second story; 6th, a water closet; 7th, a bath.

Our system of sewerage does not carry the rain water; we have adopted a separate system for that purpose, and we call it the drainage system.

In the continuation of the Britannica, published in 1902; v. 8, p. 524, "sewerage disposal," we find:

"The collection of sewage was fully discussed in the earlier article on sewerage in the ninth edition of this encyclopedia; it remains to consider the various methods of dealing with it, at the outfall, in order to render it innocuous. We must, however, have a clear conception of the composition of the liquid to be dealt with, and also know all the circumstances in which it is delivered at the works. *Domestic sewage is the fouled water supply of a community.* The water is brought into the household, and after serving its purpose is discharged into the sewerage system, as sewage. The composition of this liquid is now fairly well known, and is generally reduced, for the purpose of comparison, to a standard; that is to say, ordinary sewage is that due to a water supply of about 30 gallons per head per diem."

In the American Cyclopedia, published by Appleton in 1879, v. 14, verbo sewerage, we find it stated:

"Sewerage, a system of drainage under the streets of towns, for carrying off the surface waters and the liquid refuse matters from houses."

In Appletons' Annual Cyclopedia, published in 1881, Vol. V, fo. 364, is found the diagram of a house three stories in height, with the connection to the sewers of the kitchen sink, wash tubs, the wash-bowls, bath tubs, water closets, etc.

Now, your Honors perceive that the universal understanding at the time the taxpayers presented their petition, was that they agreed to pay the special tax of two mills, conditioned on obtaining "free sewerage and free water therefor," which includes all the water used for household purposes.

For the Legislature to have interfered in 1908 and to have attempted to change the condition, so as to compel the property taxpayers to pay for the greater part of sewerage water, was just such a breach of good faith which the Constitution of the United States intended to forbid when it prohibited the states from passing any law which impaired the obligations of contracts.

The rules and regulations of the Sewerage and Water Board provided in 1909 that the water consumers should be allowed a consumption of 1000 gallons per quarter.

"In case the consumer is not satisfied with the allowance for free water for sewerage uses, he shall be allowed to install a separate meter, which will be furnished and set by the board, at his own cost, to measure the amount of water used in his water closets, and shall be obliged to keep such closets continuously up to requirements, and such closets shall be subject to frequent careful inspection, and

so long as they are maintained in good condition, free of any leakage, and discharging not over six gallons for each flushing, no charge will be made for water furnished to them, but whenever they are found leaking or discharging over six gallons per flush, then the consumer shall pay an inspection fee of \$1 for each closet so found, and in case of considerable waste, the inspector shall estimate the amount and bill the consumer therefor at ten cents per 1000 gallons."

See regulation, *Rec.*, p. 50, *et seq.*

Your Honors perceive that the bath tubs, washstands and other necessary fixtures in the house which must all be connected to the sewer are not included in the exemption allowed as free water to the taxpayer, by the rules of Sewerage and Water board.

If the plaintiffs are wrong in their contention it turns out that, after paying a special tax of two mills for fifteen years, they must also pay for the use of the water an amount equal to what a utility company would charge to furnish them their water. I mean to say that if we paid twelve dollars a year to the old waterworks company we still have to pay a like amount to our Sewerage and Water Board.

To show you the injustice of such a claim, it has been testified by Mr. Earle that the daily consumption of water amounts to 16,000,000 gallons, and of that amount five million is paid for by the consumers. *Rec.*, p. 20.

The City pays nothing for the 11,000,000 gallons consumed by her.

The city paid the old waterworks company \$165,000 per annum. The city is now getting the benefit of the



waterworks plant and not making any appropriation, although required to do so under Section 28 of the Act No. 6 of 1899.

Your Honors must have noticed that 1000 gallons per quarter per head is allowed. There being 90 days in the quarter, it follows that the daily allowance is eleven gallons. By the same rules six gallons are allowed for one closet flushing. By using the closet twice in the day no free water is left for your bath, nor for washing of your hands, face or body.

The perspiration contains much virulent toxin which must be classed in the category of excrement, and should be carried off in the sewers. Therefore the bath tub is as much a part of the sewerage system as the closet, and was so intended when the taxpayer voted the special tax.

"In 1870, the water consumed by the principal European cities in gallons per capita was as follows: London, 29; Liverpool, 27; Glasgow, 40; Paris, 30; Marseilles, 40; Genoa, 30; Geneva, 76; Madrid, 16, and Berlin, 18. On the other hand, it is not an unusual thing to find American cities consuming all the way from 100 to 250 gallons per capita. Without doubt, a great deal of the water in such cases is really wasted, but American hydraulic engineers in planning for a water supply under the present conditions calculate upon the basis of a consumption of 100 gallons per capita, with provisions to meet an increased demand in the near future."

In the encyclopedia of the Scientific American, v. 16, verbo water supply, your Honors will find a table of the per capita consumption of water in the larger cities of the United States:

New York, 120 gallons per capita; Chicago, 190; Philadelphia, 229; Brooklyn, 86; Boston, 143; Cleveland, 159;

St. Louis, 159; San Francisco, 73; Cincinnati, 121; Detroit, 146; Milwaukee, 80; New Orleans, 48; Minneapolis, 93; Providence, 54; Indianapolis, 79. This was published in 1904.

In this list New Orleans consumed 13,820,000 gallons daily on a per capita consumption of 48 gallons, therefore, a total consumption of 13,820,000 gallons used, imply a then existing population of 283,750. The charges were flat rates. Much other valuable information and statistics are contained in said article which emanates from John W. Hill, Chief Engineer of the Department of Public Works, Philadelphia.

In the same work in an article written by W. Morey, Jr., civil engineer, we find it stated, under the title of "Waterworks," that the consumption of water amounted to 300 gallons per capita daily, in the ancient cities of Jerusalem, Rome, Bysantium and Alexandria.

In Johnson's Universal Cyclopedia published in 1895, we find under word sewerage:

"Amount of Sewerage.—The amount of sewerage per capita depends very largely upon the water supply. It is also dependent upon the habits of the people, the amount of manufacturing in which large quantities of water are used, and the use of water-motors for elevators, &c."

"The volume of sewerage to be provided for per day may be taken as equal to the volume of water supplied. This varies greatly in different towns and in different years in the same town. United States statistics show that the use of water varies in the different cities from 25 to 175 gallons per day per capita, and that the amount used is rapidly increasing. In many cases the increase has been one hundred per cent in twenty years."

"It would not be safe, in any case, to assume the consumption of water to be less than one hundred gallons per day per capita, and where water is much used for manufacturing purposes, and for motors a still larger amount must be provided for."

The small amount of eleven gallons allowed by the Sewerage and Water Board is not nearly sufficient, when you consider the climatic conditions of New Orleans. The heat here requires a larger amount of water for cleansing purposes than in any of the other large cities of the United States. The figures above given for New Orleans would result from the figures given by the old waterworks company, and result from their flat rates, to 48 gallons daily per capita.

We therefore conclude that the obligations to furnish petitioners with free sewerage water, imposed on the Sewerage and Water Board, arise from the contract stipulations contained in the petition of the taxpayers of this city, and that the Constitution of the United States prohibited the State from enacting the Act of 1908, No. 270, which impaired the obligations of that contract.

The judgment of the lower Court, which was in favor of defendant, should be reversed and judgment should be rendered in favor of the petitioners, enjoining the Sewerage and Water Board from making any charge for domestic water which includes all water used by petitioners for household purposes, all of which is designated as sewerage water.

Respectfully submitted,

CHAS. LOUQUE,  
Of Counsel.

Sept. 17, 1914.

## ACT NO. 131 OF 1898.

To prescribe the manner in which special elections shall be held in any parish, municipality, ward, or school district of this State, for the purpose of levying special taxes for the support of public schools, and for the purpose of erecting and constructing public buildings, public school houses, bridges, wharves, levees, sewerage work and other works of permanent improvement, the title to which shall be in the public, in such parish, municipality, ward or school district, and to carry into effect Article 233, of the Constitution of 1898.

Sec. 1. Be it enacted, etc., That whenever one-third of the property tax-payers of any parish, municipality, ward, or school district in this State shall petition the Police Jury of such parish, or the municipal authorities of such municipality, to levy a special tax for the support of public schools, and for the purpose of erecting and constructing public buildings, public school-houses, bridges, wharves, levees, sewerage work and other works of permanent public improvement, the title to which shall be in the public, the said Police Jury or municipal authorities shall order a special election for that purpose, and submit to the property tax-payers of each parish, municipality, ward, or school district, the rate of taxation, the number of years it is to be levied and the purposes for which it is intended; provided, that said election be held under the general election laws of the State, and at the polling places at which the last preceding general election was held, and not sooner than thirty days after the official publication of the petition and ordinance ordering the election.

Sec. 2. Be it further enacted, etc., That the petition mentioned in Sec. 1, of this act shall be in writing, and shall designate the object and amount of the tax to be levied

each year, and the number of years during which it shall be levied.

Sec. 3. Be it further enacted, etc., That if a majority in number and value of the property tax-payers of such parish, municipality, ward or school district voting at such election, shall vote in favor of such levy of said special tax, then the Police Jury, on behalf of such parish, ward, or school district, or the municipal authorities, authorities for and on behalf of such municipality shall immediately pass an ordinance levying such tax, and for such time as may have been specified in the petition, and shall designate the year in which such taxes shall be levied and collected.

Sec. 4. Be it further enacted, etc., That all tax-payers voting at said election shall be registered voters, except women tax-payers, who shall vote without registration. All tax-payers entitled to vote shall do so in person except women who shall vote either in person or by their agents authorized in writing.

Sec. 5. Be it further enacted, etc., That the Police Jury of any parish, ward, or school district, or the municipal authorities, of any municipality, shall, when the vote is in favor of the levy of such taxes, levy and collect annually, in addition to other taxes, a tax upon all taxable property within such parish, municipality, ward, or school district, sufficient to pay the amount specified to be paid in such petition, and such police jury and authorities shall have the same right to enforce and collect any special tax that may be authorized by such election, as is or may be conferred by law upon them for the collection of other taxes, which taxes so collected shall be used for the purpose named in said petition, and in the case of a tax being named for the support of a public school, or for the purpose of erecting a public school-house, the same shall from time to time, as the same is

collected, be paid to the board of school directors of the parish in which said tax is levied, and be used for the purpose stated in said petition.

(Signed)

S. P. HENRY,

Speaker of the House of Representatives.

(Signed)

R. H. SNYDER,

Lieutenant Governor and President of the Senate.

Approved July 13th, 1898.

MURPHY J. FOSTER,

(Signed)

Governor of the State of Louisiana.

A true copy:

JOHN T. MICHEL,

Secretary of State.

## ACT NO. 4 OF 1899.

### Extra Session.

### Joint Resolution.

Proposing an amendment to the Constitution of the State of Louisiana relative to ratifying and carrying into effect a special tax levied in the City of New Orleans for certain public improvements, and to establish therein public systems of sewerage and water, the issuance of bonds therefor and the providing ways and means to pay the principal and interest of said bonds.

Sec. 1. Be it Resolved, etc., That the following amendment to the Constitution of the State be submitted to the electors of the State at the next general election for representatives in the Legislature, to be holden on the Tuesday next following the third Monday in April, A. D. 1900, to-wit:

Article 1. "The special tax for public improvements, voted by the property taxpayers of the City of New Orleans on June 6, 1899, and levied by the City Council, by Ordinance No. 15,391, approved June 22, 1899, is hereby ratified, and its validity shall never be questioned. The special act adopted by the Legislature at the Special Session held on August 8, 1899, constituting the Sewerage & Water Board of the City of New Orleans, authorizing the City of New Orleans to issue bonds, and providing the means to pay the principal and interest thereof, and for other purposes cognate to the purposes of the spécial tax aforesaid, is hereby ratified and approved, specially including the therein reserved legislative right to amend the same; and all provisions of the present Constitution in conflict with the provisions of said act, and with this amendment, are to that extent and for that purpose only repealed."

Sec. 2. Be it further resolved, etc., That on the official ballots, to be used at said election, shall be placed the words, "For the City of New Orleans Public Improvement Amendment;" and the words "Against the City of New Orleans Public Improvement Amendment," and each elector shall indicate, as provided in the general election laws of the State which of the propositions, for or against he votes for.

(Signed) S. P. HENRY,  
Speaker of the House of Representatives.  
R. H. SNYDER,  
Lieutenant Governor & President of the  
Senate.

Approved August 18th, 1899.

MURPHY J. FOSTER,  
Governor of the State of Louisiana.

A true copy:  
JOHN T. MICHEL,  
Secretary of State.



## ACT NO. 6 OF 1899.

## Extra Session.

To make effective the vote and levy of the special tax by the property taxpayers of the city of New Orleans for water, sewerage and drainage purposes by authorizing the capitalization of said tax by the issuance of fifty year bonds of the city of New Orleans, under certain conditions and with certain privileges and restrictions, providing for the payment of the principal and interest thereof, for the disposition of the said bonds and the proceeds thereof, and defining the powers and duties of the Board of Liquidation with reference thereto; by constituting and establishing a Sewerage and Water Board for the city of New Orleans, and defining its powers, duties, rights and obligations with reference to the public, the City Council, the Board of Liquidation, and the Drainage Commission, and vice versa; by authorizing the city of New Orleans, through said board, to acquire all necessary property rights and franchises by purchase, construction or expropriation, either within or without the city, necessary and proper for her public systems of sewerage and water and in such case to assume as part of the purchase price existing mortgages on said property, and to provide for the payment of the principal and interest of such assumed debts; and to provide for the violation of said act.

Whereas, due notice of this act has been published in the city of New Orleans for more than thirty days prior to its introduction into the General Assembly, and due evidence thereof has been exhibited in the General Assembly.

And Whereas, on June 6, 1899, the property taxpayers of the City of New Orleans in due form of law voted a special tax of two mills on the dollar for forty-three years, beginning with the year 1899, upon certain conditions set

forth in the property taxpayers' petition, made the basis of said election, the proceeds whereof are to be exclusively devoted in such ratio as may be required to the following purposes of permanent public improvement, to-wit:

1. To acquiring title by the city by construction, or purchase, or both, to a system of waterworks, to the extension thereof throughout the city, inclusive of the Fifth District, and to the purification of the water supply therefrom.
2. To the construction throughout the city, inclusive of the Fifth District, of a free sewerage system, with free water therefor, the title whereof shall be in the city.
3. To the completion of the public drainage system of the city of New Orleans, inclusive of the Fifth District now in process of construction.

And Whereas, the Common Council of the city of New Orleans did by Ordinance No. 15,391, C. S. approved June 22, 1899, levy the said tax upon the said conditions, and provide for the establishment of said public systems of sewerage and water.

And Whereas, the said condition so imposed upon the said tax require legislative action to make them thoroughly effective so that the purposes of said tax levy may be fully carried out;—

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that subject of the ratification of the people of the State of Louisiana, by an amendment to the Constitution of the State, the whole proceeds of the special tax of two mills voted by the property taxpayers of the city of New Orleans on the sixth day of June, 1899, on the basis of the assessed values of the city of New

Orleans for the year 1899, added to the proceeds, on the same basis, of one half the surplus of the present one per cent debt tax, levied by virtue of Article 314 of the Constitution of the State of Louisiana of 1898, shall be capitalized by issuing the bonds of the city of New Orleans, to be styled the "Public Improvement Bonds of the City of New Orleans," dated July 1, 1900, having fifty years to run, bearing as low a rate of interest as can be negotiated for, but not in any event to exceed 4 per cent per annum, which bonds are to be sold only as needed, at not less than par and accrued interest, and the proceeds thereof applied exclusively to the purposes above set forth. The proceeds of the two funds aforesaid shall be applied by preference in each year to the payment of the interest on said bonds, and any surplus remaining after the payment of such interest, and all arrears of interest, may be used, less 20 per cent reserve from each year's surplus, in extending and completing the public works aforesaid. Whenever the aggregate of the surplus aforesaid shall equal a sum sufficient to pay one-half the annual interest on the bonds aforesaid, then no such surplus shall be reserved as long as the amount of this aggregate remains intact; and this reserve shall be used only when necessary to insure the prompt and regular payment of interest on said bonds. So much of the special tax to be levied in the year 1899 as may be necessary shall be used in such acquisitions of property, preliminary investigations, surveys and experiments as the "Sewerage and Water Board", hereinafter constituted, may in their judgment find necessary and proper to enable them to plan, devise and prepare to contract for the construction of the permanent public works aforesaid. Said bonds shall contain a clause authorizing the city of New Orleans, after July 1, 1942, to call and pay the principal of the same at par and accrued interest, in such manner and form as it may

deem best. The interest on said bonds after July 1, 1942, and the principal thereof shall be paid by the levy after the year 1942 of the 1 per cent debt tax aforesaid until all the principal and interest on said bonds are fully and finally paid, and the proceeds of said 1 per cent debt tax are specially dedicated to said purpose on and after July 1, 1942. In case there should be in any year a deficiency in the funds aforesaid to pay the full interest upon all of the bonds outstanding, such deficiency of interest shall be funded into bonds of such denominations as may be found convenient, bearing the same rate of interest as the original bonds, and having a term to run equal to the balance of the term on the original bonds, but subject to call at will by the city of New Orleans; and in case any such bonds are issued they shall be stamped across their face "Interest Funding Bonds issued subject to immediate call;" and all surplus revenues thereafter arising from said taxes shall be applied to the retirement of such bonds numerically as fast as such surplus accrues. Said interest funding bonds shall have all the guarantees and securities provided for the original bonds in said Ordinance No. 15,391, C. S. and in this act for their payment, principal and interest.

Sec. 2. Be it further enacted, etc., That as soon as constitutional authority above mentioned for issuance of said bonds is obtained, it shall be the duty of the Board of Liquidation of the City Debt, at the expense of the special tax fund in their possession, to advertise for sixty days in London, Amsterdam, New York, Chicago, and New Orleans, for sealed proposals to buy the whole issue of said bonds, to-wit: twelve millions bearing 4 per cent, or fourteen millions bearing  $3\frac{1}{2}$  per cent or sixteen million bearing 3 per cent the purchaser or purchasers to take the bonds from time to time, on sixty days' notice, and pay the cash therefor as the exigencies of the Sewerage and

Water Board may require; and it shall accept the bid or bids, or aggregate of bids or parts of bids covering the whole issue, not less than par and accrued interest, that agrees to take such bonds at the best price and the lowest rate of interest; such acceptance, however, shall be subject to the ratification of the City Council by a formal ordinance. Both the Board of Liquidation and the Council shall have power to reject any and all bids and to re-advertise for new bids in the manner above provided.

Sec. 3. Be it further enacted, etc., That when the rate of interest which said bonds are to bear has been fixed by the bid aforesaid, and the acceptance thereof by the City Council, the Board of Liquidation shall cause said bonds to be engraved of proper design, at the expense of the special tax fund in their possession. Said bonds shall be of denomination of \$1000 each, payable in lawful money of the United States, with semi-annual interest coupons annexed, payable January 1, and July 1. They shall be signed by the Mayor and Comptroller of the city of New Orleans, and countersigned by the president or vice-president and Secretary of the Board of Liquidation of the City Debt. They may be registered and released from registry under the rules and regulations prescribed by said Board of Liquidation, and no registered bond shall be negotiable. Like other city bonds, they shall be exempt from all taxation, State, parish and municipal, and the tutors of minors and curators of interdicts shall be authorized to invest the funds in their hands in such bonds.

Sec. 4. Be it further enacted, etc., That inasmuch as the surplus of the 1 per cent debt tax aforesaid has heretofore by Act No. 114 of the Acts of 1896, and Act No. 63 of the Acts of 1898, been devoted exclusively to drainage purposes, and the Drainage Commission, constituted by said acts, has issued bonds, callable after December 1,

1899, payable out of said fund, there shall be sold and delivered as aforesaid, as soon as possible, Public Improvement Bonds enough to provide for the retirement of said drainage bonds, and the first funds that reach the hands of the Board of Liquidation from the sale of said public improvement bonds shall be exclusively and sacredly devoted to the payment and retirement of said outstanding drainage bonds, and any other debts created by the Drainage Commission against said fund, so as to free the said surplus of the 1 per cent debt tax from all lawful claims and demands thereon, in order that the dedication of said funds to the purposes of this act may have full force and effect.

On and after the adoption of the Constitutional Amendment aforesaid, the Drainage Commission shall not issue or dispose of any more bonds under the acts aforesaid, and when the bonds issued by it have been retired as aforesaid, the proceeds of the sale of all franchises now required by law to inure to said commission shall revert to the city of New Orleans, to be used for permanent public improvements. After the passage of this act the Drainage Commission shall make no contracts payable out of the bonds issued or to be issued by it or payable out of the half surplus of the 1 per cent tax for the extension of the drainage system beyond those now made.

Sec. 5. Be it further enacted, etc., That the Board of Liquidation of the City Debt shall immediately deposit the proceeds of the sale of the "Public Improvement Bonds" aforesaid, and the proceeds of the special tax aforesaid and the surplus of the 1 per cent debt tax aforesaid, and of proceeds of the 1 per cent tax after July 1, 1942, with the fiscal agent of the city of New Orleans, or if the fiscal agent is not satisfactory in the opinion of the Board of Liquidation, with a chartered depository



selected by the Board of Liquidation, with the approval of the City Council, to the credit of a special fund called the "Public Improvement Fund," and said Board of Liquidation are specially charged with the payment of the interest and principal of the bonds aforesaid.

All payments made by the "Sewerage and Water Board", aforesaid, are to be made in the form of warrants or drafts on the "Board of Liquidation of the City Debt," setting forth the amount thereof, the person to whom payable and the purpose for which the payment is made; and the said Board of Liquidation is hereby charged with the duty of taking care that no irregular, or improper or unlawful payments are made out of said special tax fund. Said Board of Liquidation shall have no authority or right to use or to pay out any portion of said special tax fund, or the half surplus of the said 1 per cent debt tax, for any purpose whatever, except for the purposes specially designated in this act.

Sec. 6. Be it further enacted, etc., That the powers, duties and functions of the Board of Liquidation of the City Debt as set forth in Act No. 110 of the Acts of 1890, shall continue in full force, until the bonds authorized by this act are fully and finally paid and retired, and all the provisions of said act with reference to the power and duty of said Board, in certain contingencies, to levy and collect the said special tax of 1 per cent are hereby extended to the said special tax of two mills, and to the said 1 per cent debt tax, after the year 1942; and said taxes and their proper levy and collection, are hereby declared to be the vested right of all the holders of bonds issued under this act; provided, that nothing in this act shall be construed so as to authorize or empower the Board of Liquidation or any other body to levy and collect the said special tax of two mills after the year 1942;



Sec. 7. Be it further enacted, etc., That said Board of Liquidation shall semi-annually, the 1st of January and the 1st of July, of each year, present to the City Council a detailed report of all receipts and disbursements coming into its hands under the provisions of this act.

Sec. 8. Be it further enacted, etc., That for the purpose of constructing, controlling, maintaining and operating the public water system and public sewerage system of the city of New Orleans, there is hereby organized and constituted a "Sewerage and Water Board," to be composed of the members of the Drainage Commission as now constituted, and a citizen property tax payer possessing property assessed in his own name and situated in the city of New Orleans of two years' previous residence in each of the seven municipal districts of the City of New Orleans, to be appointed by the Mayor for twelve years, with the consent of the Council. The first appointment to be made under this act shall be one for two, one for four, one for six, one for eight, one for ten, one for twelve, and one for fourteen years, so that one new commissioner will be appointed every two years; and on expiration of each commissioner's term his successor shall be appointed for twelve years. All vacancies shall be filled by appointment by the Mayor, with the consent of the Council, for the unexpired term. In case any taxpayer member of the Sewerage & Water Board shall be elected to any office, or receive any appointment which would make him a member of the Drainage Commission, or shall remove his residence from the district from which he was appointed, or shall cease to be a property taxpayer, his membership of said board as such taxpayer shall be *ipso facto* vacated, and his successor shall be immediately appointed as aforesaid; provided, however, that no person who is a stockholder or bond holder in any sewerage or water-works company shall be eligible by appointment to said board.

In case any additional memberships are hereafter added to the Drainage Commission as now constituted, the incumbents thereof shall not constitute part of said board; and in case any of the present memberships of said Drainage Commission are stricken therefrom the said board shall remain diminished by such reduced membership; provided, however, that the Mayor of the City and the chairman of the three city committees of finance, budget, and water and drainage, and the president and one designated member of the Board of Liquidation shall always be members of said board, even if they should be excluded from the Drainage Commission, or the said commission should be abolished.

The said "Sewerage & Water Board" shall be appointed and organized immediately after the passage of this act, and shall forthwith proceed to execute the powers granted to and duties imposed upon it so far as the same can be done before the constitutional authority aforesaid can be obtained. It shall make rules fixing its own meetings and procedure, and these rules shall be changed only by the vote of twelve members at a regular meeting.

Sec. 9. Be it further enacted, etc., That the members of said Board shall be removed from office only in the manner and for the causes enumerated in Articles 217 and 222 of the State Constitution.

Sec. 10. Be it further enacted, etc., That the Mayor of the City of New Orleans shall be Ex-Officio President of said board and said board shall elect some competent and responsible person as Secretary, who shall receive a salary of \$1800.00 a year, which may be increased with the consent of the City Council. He shall hold office subject to the pleasure of the board. No member of said board shall receive any salary or compensation whatever for his services, except actual traveling expenses incurred at the request

of, and for the benefit of the board. The board shall have power to elect one of its members President pro-tempore, who shall act in the absence or disability of the President.

Sec. 11. Be it further enacted, etc., That all meetings of said Board shall be held in the City Council chamber, and shall be open and public, and all of its transactions shall be recorded in the minutes thereof to be kept in writing by the Secretary; and its records shall be public records. Nine members thereof shall constitute a quorum.

Sec. 12. Be it further enacted, etc., That said board shall elect a competent and skillful engineer as general superintendent and shall fix his salary, and shall from time to time define his duties and powers. He shall hold office during the pleasure of said board. It shall also have power to organize and employ a board of advisory engineers in order to arrange and devise an efficient public sewerage system in this city; and an adequate public water supply of pure water, and to fix the compensation of such advisory board.

Sec. 13. Be it further enacted, etc., That the said board shall have power and authority to employ all the necessary clerks, firemen, and other skilled and unskilled employees necessary and proper to the efficient administration, operation and control of the said public sewerage and said public water system. All such employees, except unskilled laborers, shall be appointed only after they have passed the civil service examination by the Civil Service Commissioners of the City of New Orleans. They shall hold their positions during good behavior, and shall be removed only for cause and after hearing by the Civil Service Commission. The general superintendent shall have authority to suspend an employee for cause until trial before the commission. Nothing herein shall be construed as preventing the board from dispensing with the

services of unnecessary employees. Civil service rules shall not apply to the Secretary, the General Superintendent or to the Advisory Board of Engineers.

Sec. 14. Be it further enacted, etc., That the City Attorney of the City of New Orleans, shall be the legal adviser of said board, and said board shall have no power or authority to employ counsel unless some question shall arise between it and the city of New Orleans. The City Attorney shall receive as compensation for his services to said board the sum of twenty-five hundred dollars, (\$2500.00) per annum payable monthly out of the funds of said board up to the first day of May, 1902, when said salary shall cease. If the legal business of the board shall become of sufficient magnitude to require it, it shall be the duty of the Council, on the request of the board, to authorize the City Attorney to appoint with the approval of the City Council, a special assistant for this purpose, whose salary shall be fixed by the board and paid out of its funds, and shall not exceed the sum of thirty-five hundred dollars (\$3500.00) per annum.

Sec. 15. Be it further enacted, etc., That said board shall have power, by a vote of twelve of its members, to acquire in the name and for the benefit of the City of New Orleans the plant and franchises of any water or sewerage companies in the city of New Orleans, but no contract for that purpose shall be valid until ratified by ordinance of the Common Council of the City of New Orleans. In case no agreement can be reached between said board and the City Council on the one side, and the representatives of the said companies on the other, as to the price to be paid said companies for their property and franchises, and it shall become necessary for the city of New Orleans to expropriate the same, the price to be paid on such expropriation shall be paid by said board out of the pro-

ceeds of the bonds aforesaid. The outstanding mortgage bonds of such companies may be assumed by the city, as part of the price. Nothing in this act shall be held to affect the right of either the State of Louisiana or the city of New Orleans in the pending litigation against the New Orleans Waterworks Company, or the New Orleans Sewerage Company.

Sec. 16. Be it further enacted, etc., That in case any of the outstanding mortgages upon the property mentioned in the foregoing section are assumed by the City of New Orleans as part of the purchase price thereof, the city shall in the ordinance of assumption, make provision for the payment of the interest and sinking fund of said debts out of the water rates to be collected by the said Water & Sewerage Board. The City Council shall further have power to extend and renew and refund said mortgage debts with the concurrence of said Water & Sewerage Board; but both bodies are prohibited from increasing the amount of any assumed mortgage or from putting any additional mortgage debt on said property, or from mortgaging any water or sewerage plant that may be constructed.

Sec. 17. Be it further enacted, etc., That whenever it becomes necessary to expropriate any property convenient or necessary for the public works aforesaid, it shall be the duty of the City Attorney, on the request of said board, to institute such proceedings in the name of the City of New Orleans, and to acquire the title to all such property in the name of said city; and the title to all the public works aforesaid, constructed by said board, and to all property of every kind and nature, real or personal, purchased or in any way acquired by said board, shall be vested in the city of New Orleans, and said board shall have full authority to expropriate any property in any of the parishes adjoining the parish of Orleans

that it may find convenient and necessary for the proper execution of the powers herein granted to it, and to extend its works into such parish for the benefit of the city of New Orleans, and to have jurisdiction and authority in such parish over said works therein situated.

Sec. 18. Be it further enacted, etc., That it shall be the duty of the said board so to plan, adjust and arrange the said public sewerage and public water systems as to make the same conform to, and as to prevent conflict with, the present approved plans of the Drainage Commission; provided that nothing contained in this section shall in any manner affect the apportionment provided for in Section 27 of this act.

Sec. 19. Be it further enacted, etc., That all persons, firms and corporations that have under and by virtue of any grants heretofore made, express or implied, laid mains, pipes or conduits, or constructed any railroads, buildings, works or structures of any kind in, on or over the public streets, shall be compelled at their own cost and expense, to shift or adjust their said mains, etc., to the exigencies of said public sewerage and public water systems.

Sec. 20. Be it further enacted, etc., That the said board shall have full power and authority to make all needful rules and regulations for the use of the said public system of sewerage and the free water supply furnished therewith, and to prevent the obstruction thereof or interference therewith or damage thereto, and to compel all premises in the city of New Orleans to be connected with said system, and to compel the closing and discontinuance of all other sewers, and all vaults, cess-pools, privies, water closets, urinals, foul water drains, and outlets for any kind of fluid material whatever; and any violation of the rules and regulations so established by said board and duly promulgated in the Official Journal, shall be



punished by a fine not exceeding \$25.00 for each offence, or by imprisonment not exceeding thirty days for each offence or by both, in the discretion of the court having jurisdiction of the offence. So much of such fines as may be inflicted for the violation of the rules pertaining to the sewerage system shall revert to the City Health Authorities. Nothing in this act shall be construed as taking away the existing inspecting and supervisory power of the Board of Health of the City of New Orleans, over the sanitary conditions of the premises.

Sec. 21. Be it further enacted, etc., that the said Board shall have power to fix the rates to be charged private consumers of water, and to collect the same from all persons who use water, (except for sewerage purposes only) from the public water supply of the City of New Orleans except the City of New Orleans and her public institutions, such as jails, schools, etc., the Charity Hospital, the Touro Infirmary, the House of Good Shepherd, Soldiers' Home, Hotel Dieu, the Louisiana Retreat, the Southern University and all orphan asylums and homes for the aged and infirm. These charges shall be based, as far as possible, upon the actual amount of water consumed, shall be equal and uniform for each grade or class of customers, and shall be framed so as to cover only the actual cost of the maintainance of the said public water system, inclusive of interest and sinking funds of any assumed mortgage bonds on said property, and of the furnishing of the public and private water supply. Said Board shall have further power to make reasonable rules and regulations for the use and consumption by such pay customers, and by such free consumers of the water supply furnished them, and to prevent the obstruction of, interference with or damage to the pipes, mains and other appurtenances of said water system, and any violation of such reasonable rules and regulations so estab-



lished by said Board, and duly promulgated in the official journal, shall be punished by a fine not exceeding \$25.00 for each offence, or by imprisonment not exceeding thirty days for each offence, or by both, in the discretion of the court having jurisdiction of the offence.

Sec. 22. Be it further enacted, etc., that all funds received by the said board from water rates, and from the city of New Orleans, by appropriation from its treasury, shall be deposited to the credit of the said board as collected, with the fiscal agent of the City of New Orleans, and shall not be paid out except upon duly adopted resolutions of appropriation, promulgated in the official journal, and upon checks signed by the President and the Secretary of said board, and countersigned by the chairman of the Finance Committee of the City of New Orleans.

Sec. 23. Be it further enacted, etc., that all supplies and materials required by said board for the conduct, operation, maintenance and repair of said public systems of sewerage and water shall be purchased on detailed written specifications as to grade, quality and amount from the lowest bidder under sealed proposals, who can give the required bond to comply with the contract at public adjudication, after at least ten days' notice in the official journal of the city of New Orleans. In every case it shall have power to reject all bids and advertise for new bids. In case of emergency the General Superintendent can, with the written consent of the President pro tempore of the board and of the Mayor of the city, contract a bill for such supplies and material not exceeding \$500.00 in amount, but all such bills so contracted must be reported, with the reasons therefor, to the next meeting of the board, otherwise the board shall not pay the same. In the purchase of all supplies and material, preference shall be given to home merchants and manufacturers, all con-

ditions being equal. All contracts for repair or renewal work not executed by the regular employees of the board, shall be similarly let to the lowest bidder, after similar advertisement, with the same right of rejection.

Sec. 24. Be it further enacted, etc., That all contracts for the construction of the said public systems of sewerage and water shall be let to the lowest bidder by sealed proposals or by public auction, as the board may determine, after at least sixty days' advertisement in two newspapers in the City of New Orleans, on detailed plans and specifications, one of which specifications shall always be that the contractor shall give bond with some surety company authorized to do business in the State of Louisiana, satisfactory to the board, in a sum of at least 25 per cent of the estimated amount of his bid for the faithful performance of his contract; and in case the work estimated by said specifications shall exceed the sum of \$50,000.00, bids for the same shall be similarly advertised in New York and Chicago, as well as in the City of New Orleans. Every such contract exceeding \$25,000.00 in amount shall be approved by resolution of the City Council before the same shall be operative and binding on the said board. In every case the board shall have power to reject all bids and re-advertise for new bids.

Sec. 25. Be it further enacted, etc., That no member of said board shall ever be interested directly or indirectly, in any contract, or in the losses or profits of any contract for labor, supplies, material or construction made by said board, nor for six months after the termination of his connection with the board under the penalty of dismissal from said commission and the absolute nullity of said contract; nor shall any member of said board ever be surety for any contractor or officer, or employee of the board, under a similar penalty. In case any member

of said board shall be director or stockholder in any corporation, or shall be agent for any person, who may be pecuniarily interested in any subject before the board, he shall not at any meeting of the board, or of any of its committees, discuss or vote on any such subject.

Sec. 26. Be it further enacted, etc., That in all contracts made and executed by said board for the construction or repair of said public systems of sewerage and water, there shall be contained a clause that the contractor shall give the preference in employment to bona fide residents of the City of New Orleans, both as skilled and unskilled laborers, and shall not employ any non-resident laborers, skilled or unskilled (except confidential clerks, chief engineer and head superintendents) as long as any resident labor is ready, willing and able to do the work required; that the penalty for each violation of this clause shall be the forfeiture of the sum of \$25 for each person so unlawfully employed, to be deducted by the board from the contract price due the contractor; and that the general superintendent of said board shall have the authority to dismiss all persons employed in violation of this clause. Provided that this clause shall not apply to skilled mechanics and machinists brought to the city of New Orleans by the manufacturers of machinery solely for the purpose of erecting and testing the same.

No person shall be considered a bona fide resident of the city of New Orleans under this clause of this act unless he has actually resided in the City of New Orleans for six months prior to his employment.

All the permanent employees of said board, who are required to be appointed after civil service examination shall be of good moral character, and bona fide residents of the City of New Orleans for at least one year prior to their appointment. Said board shall have power

and it shall be its duty to demand and require bonds with good and sufficient surety for the faithful performance of their duties from all of its employees who handle money or material, or who fill positions of responsibility.

Sec. 27. Be it further enacted, etc., That said board shall have power to apportion the proceeds of said Public Improvement Bonds, and the surplus of said taxes, among the three objects aforesaid—water, sewerage and drainage—but any such apportionment shall be made by a vote of twelve members of the board, exclusive of the Mayor, and shall be also approved by the Mayor in writing; and in case twelve members of said board and the Mayor cannot agree upon any apportionment, the matter shall be referred to the City Council, who shall have power to make said apportionment. Provided, that no apportionment of said funds to drainage purposes shall exceed one-third of the proceeds of said Public Improvement Bonds and surplus, until the water and sewerage systems are completed.

Sec. 28. Be it further enacted, etc., That the City of New Orleans shall annually in her budget of expenses, provide out of her alimony by proper appropriation all the funds necessary and proper, over and above the receipt of said board for water rates, to maintain and operate in an efficient manner the said public system of sewerage and the said public system of waterworks, inclusive of interest and sinking funds of any assumed mortgage bonds thereon, and the said board shall in the first week in November of each year present to the Council an estimate of the amount requisite for these purposes for the following year. No portion of the proceeds of said public improvement bonds or of the said taxes shall ever be applied to the maintenance and operation of said public system of sewerage, water and drainage, but they shall be used for construction purposes only.

Sec. 29. Be it further enacted, etc., That said board shall not have the power to obligate itself or to create any debts for construction purposes in excess of the cash amount of the proceeds of said bonds, and the surplus of said tax, and all such debts and obligations in excess of the actual cash amount of these funds shall be absolutely null and void, and of no effect; nor shall the said board, in any year, have the power to spend any sum of money, or to create any debts for the maintenance and operation of said public system of sewerage and water in excess of the actual revenue of that year, and all such debts and obligations in excess of the actual revenue of that year shall be absolutely null and void, and of no effect. The surplus revenue of one year may be carried forward and added to the revenue of the following year; but no contract or expenditures of any kind shall ever be made in anticipation of any surplus of either construction or maintenance fund.

Sec. 30. Be it further enacted, etc., That all connections with the sewerage and water mains of the two public systems aforesaid shall be made at the cost of the said board from the said mains to the edge of the foundations of the buildings on the property line, or if there are no foundations on the property line, then to the property line itself, and from that point on, they shall be made at the cost and expense of the owner of the property.

Each owner shall have the right to contract for the putting in of all such connections as he is chargeable with, but all such work shall be done under the rules and regulations, and subject to the inspection and control of said board. The board shall take separate bids from contractors for putting all property holder's connections and sewerage fixtures, leaving to each property holder the right to require the work in his premises to be done by such contractor at the bid price, or to employ some one else for that purpose.

Sec. 31. Be it further enacted, etc., That said board shall have the right to use the power supplied by the central power station of the Drainage Commission for all the necessary and convenient purposes of said public sewerage and water systems, and it shall be the duty of the Drainage Commission to furnish such power on demand and free of charge. But in case the demand for power for these purposes on the Drainage Commission shall be such as to require the installation of additional machinery, the cost of such installation shall be charged to the funds apportioned for water, or for sewerage, or for both, as the case may be, and not to the funds apportioned for drainage.

Sec. 32. Be it further enacted, etc., That on the first of January and the first of July of each year it shall be the duty of the said Board to make to the city council, in writing a full and detailed report of its acts, doings, receipts and expenditures.

Sec. 33. Be it further enacted, etc., That the contracts for the above works shall be let in such a manner as to cover the whole city, the Fifth District included, at the same time, and shall be prosecuted in such a manner that they shall be completed throughout the City, the Fifth District included, as afar as possible at the same time.

The word "whole city" as used in this section shall not be construed to mean the whole parish of Orleans, but to mean, as understood by the voters who voted this special tax, that inhabited portion of the city now divided into squares and lots where the streets are opened and in use as such, or whenever hereafter opened and in use.

Sec. 34. Be it further enacted, etc., That if the city of New Orleans cannot get proper constitutional authority to issue the bonds aforesaid prior to January 1, 1901,



then the special tax aforesaid levied shall cease and determine, and the unexpended proceeds thereof for the years 1899 and 1900 shall be paid over to the Drainage Commission, to be used for drainage purposes. In that contingency, the board constituted by this act shall be *ipso facto* dissolved and all its books, papers, records, property, etc., shall be taken possession of and held by the Drainage Commission, and this act shall cease to be operative in all of its parts and provisions.

Sec. 35. Be it further enacted, etc., That as it is proposed to have this act ratified by an amendment to the Constitution, it is hereby specially declared to be the intent of this act, and of said ratifying constitutional amendment, that the General Assembly reserves the right and power to amend this act in any respect not violative of the conditions upon which the said special tax was voted by the property taxpayers of the city of New Orleans and not impairing the vested rights or the contract rights of the holders of the bonds issued under its provisions.

Sec. 36. Be it further enacted, etc., That all laws and parts of laws contrary to, or in conflict with the provisions of this act be and the same are hereby repealed.

(Signed) S. P. HENRY,  
Speaker of the House of Representatives.  
R. H. SNYDER,  
Lieutenant Governor & President  
of the Senate.

Approved August 18, 1899.

MURPHY J. FOSTER,  
Governor of the State of Louisiana.

A true copy:

JOHN T. MICHEL,  
Secretary of State.



## ACT No. 270 OF 1908.

## An Act

To authorize the Sewerage & Water Board of New Orleans to require the introduction of water into all inhabited premises in the City of New Orleans, and to abolish or regulate the use of cisterns, tanks, wells and other water receptacles; to make the water rates established by said Board, and the sums expended in enforcing compliance with its regulations, a lien upon premises in which water supplied by said Board is used, or on which such expenditures are made, and fixing the rank of such liens, and to provide penalties for the violation of the rules and regulations established hereunder by said Board; and to further provide for the recordation and cancellation of said liens.

Whereas, due notice of this act has been published in the City of New Orleans for more than thirty days prior to its introduction into the General Assembly, and due evidence thereof has been exhibited in the General Assembly; and,

Whereas, the use of cisterns, tanks, and wells and other similar water receptacles, as a source of drinking water, is deleterious to the public health, and in the City of New Orleans such receptacles are breeding-places for the insects that cause yellow fever and malarial fever; and,

Whereas the Sewerage & Water Board of New Orleans, under its powers heretofore granted, will soon be able to furnish to the inhabitants of the City of New Orleans an abundant supply of pure, filtered water, and the maintenance of this system can only be secured by requiring all the inhabitants of the city to contribute thereto, in the proportion that they use said water for private purposes:

Sec. 1. Be it enacted, etc., That, whenever the public water plant of the City of New Orleans, now in process of construction by the Sewerage & Water Board, shall have been completed and put into operation, the said Board shall have power, and it shall be its duty, by proper ordinances and regulation to be adopted by it, to require all inhabited premises in the City of New Orleans to be connected with the mains of said system, and to take therefrom at least such water supply as shall be used on said premises for **Drinking and Domestic Purposes, Exclusive of Sewerage**, at rates to be fixed, in virtue of the powers heretofore vested in said Board.

Sec. 2. Be it further enacted, etc., That said Board shall have power to cause the abolition and removal of all cisterns and tanks, and the closing of all wells (except artesian wells), and other water receptacles situated on improved premises, and shall have power to regulate the use thereof; provided, that none of the regulations established by it shall contravene the health ordinances of the City of New Orleans.

Sec. 3. Be it further enacted, etc., That all ordinances and regulations enacted by the said Board, under the powers herein granted, may be enforced by the infliction of the penalties provided in *Act No. 6, Extra Session of 1899*, and its amendments, and said Board, after putting the owner in default, by written notice commanding him to comply within ten days, shall also have the power to do, or to cause to be done, upon the defaulting premises, that which its ordinances and regulations require, at the cost and expense of the owner, and such costs and expense shall be a lien on said premises, equal in rank to the lien of taxes, to take effect as to third persons on the recording in the Mortgage Office of the bill therefor, sworn to by the Superintendent of the Board, the charge

for which recording shall not exceed twenty-five (25c) cents for each bill.

Sec. 4. Be it further enacted, etc., That the owners of all premises shall be primarily liable for all water rates assessed against such premises for water used for all purposes, except sewerage; and the rates assessed against each premises for water used shall be a lien thereon for three years, equal in rank to the lien of taxes, to take effect against third persons on the recording of past due bills in the Mortgage Office, the charge for which recording shall not exceed twenty-five (25c) cents for each bill.

Sec. 5. Be it further enacted, That all liens recorded, as above provided, shall be cancelled on the production of the receipted bills, at a charge not to exceed twenty-five cents (25c) for each bill.

Sec. 6. Be it further enacted, etc., That all laws and parts of laws contrary to the provisions of this Act be, and the same are hereby repealed.

(Signed)

P. M. LABREMENT,  
Lieutenant Governor and President  
of the Senate.

H. G. DUPRE,  
Speaker of the House of Representatives.

Approved July 9th, 1908.

J. Y. SANDERS,  
Governor of the State of Louisiana.

A true copy:

JOHN T. MICHEL,  
Secretary of State.

## SYLLABUS.

*Fact*  
*6/15*  
*3*  
*5-2*

Where the tax payers petitioned to tax themselves for the purpose of building a "free sewerage system with free water therefor;" this was well understood to mean free water to all the taxpayers, who were connected to the sewers. All the fixtures which are used for cleansing purposes and are connected to the sewers are entitled to free water. The Sewerage System commences in the houses, at the various receptacles, used for cleansing purposes. The water used in these fixtures is what was intended by sewerage water when the taxpayers voted to tax themselves. The Legislature was without power to alter this intent and impair the obligations of this contract by substituting the word domestic water, to the previous well understood meaning of Sewerage Water.

Office Supreme Court, U.

FILED

MAR 11 1915

JAMES D. MAHER

CLERK

# SUPREME COURT

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No. 192

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OCTOBER TERM, 1914.

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THE NEW ORLEANS TAX PAYERS

versus

THE SEWERAGE AND WATER BOARD OF NEW  
ORLEANS,

---

SUPPLEMENTAL BRIEF FOR PLAINTIFFS IN ERROR.

---

The answer to the proposition of the Defendants, that inasmuch as the State had the right to levy the Tax, no contract right could exist by reason of such levy, is simply to quote article 232 of the Constitution of 1898, which limits the rate of taxation to ten mills and only authorizes a special tax for works of public improvements, when the consent of the property tax payers is obtained after a vote, where the majority in number and amount of property, carries the election.

If this be not the consent and agreement of parties, creating rights and co-relative obligations, called a contract and falling under the terms of the Constitution, we are at a loss to know what is meant by a contract.

*Art. 232. Constitution of La. of 1898.*

The State tax on property for all purposes whatever, including expenses of government, schools, levees and interest, shall not exceed, in any one year, six mills on the dollar of its assessed valuation, and, except as otherwise provided in this Constitution, no parish, municipal or public board tax for all purposes whatsoever, shall exceed in any one year ten mills on the dollar of valuation; provided, that for giving additional support to public schools, and for the purposes of erecting and constructing public buildings, public school houses, bridges, wharves, levees, sewerage work and other works of permanent public improvement, the title to which shall be in the public, any parish, municipal corporation, ward or school district may levy a special tax in excess of said limitation, whenever the rate of such increase and the number of years it is to be levied and the purpose or purposes for which the tax is intended, shall have been submitted to a vote for the property taxpayers of such parish, municipality, ward or school district entitled to vote under the election laws of the State, and a majority of the same in numbers, and in value voting at such election shall have voted therefor.

The Legislature is powerless to alter this contract. If it does it impairs the obligations of a contract.

Mch. 8, 1915.

Respectfully submitted,

CHS. LOUQUE,

Of Counsel.

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# **Supreme Court of the United States**

**October Term, 1914.**

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**No. 192.**

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**THE NEW ORLEANS TAX PAYERS PROTECTIVE  
ASSOCIATION, ET AL.,**

**Plaintiffs in Error,**

**versus**

**THE SEWERAGE AND WATER BOARD OF NEW  
ORLEANS,**

**Defendant in Error.**

---

**Brief on Behalf of Sewerage and Water Board, Defend-  
ant and Defendant in Error.**

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## **SYLLABUS.**

“The contract clause of the Federal Constitution is not directed against all impairment of contract obligations, but only against such as result from a sub-

sequent exertion of the legislative power of the State.

“The contract clause does not reach mere error committed by a State Court when passing upon the validity and effect of a contract under the laws existing when it was made; and even if such errors operated to impair the contract obligation, there is no Federal question, in the absence of a subsequent law, on which to rest the decision of the State Court.

**Cross Lake Shooting & Fishing Club v. State of Louisiana, 224 U. S., page 632.**

“When the State Court gives no effect to the subsequent law, but decides on grounds independent of that law, that the right claimed was not conferred by the contract claimed to have been impaired, the case stands as though the subsequent law had not been passed and the Court has no jurisdiction.”

**Missouri-Kansas Interurban Railway Company v. City of Olathe, 222 U. S., page 187.**

**Cross Lake Shooting and Fishing Club v. State of Louisiana, 224 U. S., page 632.**

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**Weber v. Rogan, 188 U. S., page 14.**

**Central Land Co. v. Laidly, 159 U. S., page 103.**

**Missouri & Kansas Interurban Railway Co. v. Kansas, 222 U. S., page 187.**

**New Orleans Water Works v. La. Sugar Refg. Co., 125 U. S., page 38.**

**Mobile, Jackson Railroad Co. v. Mississippi, 210 U. S., page 187.**

**Bacon v. Texas, 163 U. S., page 207.**

Where the Constitution of the State provides, that:

"No parish, municipal or public board tax for all purposes whatsoever, shall exceed in anyone year ten mills on the dollar of valuation; provided, that for giving additional support to public schools and for the purpose of erecting and constructing public buildings, public school houses, bridges, wharves, levees, sewerage work and other work of permanent public improvement, the title to which shall be in the public, any parish, municipal corporation, ward or school district may levy a special tax in excess of said limitation, whenever the rate of such increase and the number of years it is to be levied and the purposes for which the tax is intended, shall have been submitted to a vote of the property tax payers of such parish, municipality, ward or school district entitled to vote under the election laws of the State, and a majority of the same in numbers, and in value voting at such election shall have voted therefor"; and in pursuance thereof an election was held and the property tax payers of the municipality voted upon themselves a special tax of two mills on the dollar, for a period of forty-three years, for the purpose of constructing, maintaining and operating a sewerage, water and drainage system, the voting of the tax and the levying of same does not constitute a contract between the citizens tax payers and the State. No consideration moves to the State, other than the general public welfare; and the imposition of the tax is an exercise of a fundamental sovereign power.

**State ex rel. Saunders v. Kohnke**, 109 La., page 838.

**Hunter v. Pittsburg**, 207 U. S., page 161 (177).

**Tucker v. Ferguson**, 22 Howard, page 575.

**West Wisconsin Railway Co. v. Supervisor**, 100 U. S., 597.

A grant by the General Assembly of a charter to a municipal corporation, called the Sewerage & Water Board of New Orleans, for the purpose of constructing, controlling, maintaining and operating the public water system, the public sewerage system and the drainage system of the City of New Orleans, title whereof shall be in the City of New Orleans, does not constitute a contract with the State, and the charter is subject to legislative control, except where restricted by the State Constitution.

**State ex rel. Saunders v. Kohnke**, 108 La., p. 838.

**Hunter v. Pittsburg**, 207 U. S., p. 161 (177).

Where the taxpayers of the City of New Orleans voted upon themselves a special tax of two mills per annum for a period of forty-three years, to be devoted to the three-fold purposes of acquiring a system of waterworks, and the purification of the water supply therefrom; the completion of the drainage system, and the construction of a free sewerage system, with free water therefor, title whereof shall be in the city; and provided that rates should be charged to all private consumers who took water from the public water supply, and the Supreme Court of Louisiana held that free water was for the system only and not for private consumption, there is no error in the judgment.

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### STATEMENT OF THE CASE.

Article 232 of the Constitution of the State of Louisiana of 1898, provided that municipal taxes should not exceed ten mills on the dollar of valuation, for any one

year; and contained the proviso that for the construction of permanent public improvements, such as schools, waterworks, sewerage works, etc., the title to which shall be in the public, any parish, municipal corporation, etc., may levy a special tax in excess of said limitation, whenever the rate of such increase and the purpose for which the tax is intended, shall have been submitted to the vote of the property tax payers of such parish, municipality, etc.

Act 131 of the General Assembly of Louisiana, of 1898, provided the modus of provoking an election for any of said purposes. (Tr., pp. 26, 27 and 28.)

In 1899 certain tax payers of the City of New Orleans petitioned the Council thereof, praying that it call an election submitting to the property tax payers of said parish, the proposition to levy a special tax of two mills per annum, for a period of forty-three years, beginning with the year 1899, the proceeds thereof to be applied as required to the following purposes of permanent public improvement, to-wit:

**"1st.** To acquire title by the city by construction or purchase, or both, to a system of waterworks, to the extension thereof throughout the city, inclusive of the Fifth District; and to the **purification of the water supply therefrom.**

**"2nd.** To the construction throughout the city, inclusive of the Fifth District, of a **free sewerage system, with free water therefor;** the title whereof shall be in the city.

**"3rd.** To the completion of the public drainage system of the City of New Orleans, inclusive of the Fifth District, now in process of construction."

And also provided, that as soon as possible after the tax is voted that legislative and constitutional authority be obtained authorizing the funding of said tax, together with the proceeds of the one-half surplus of the one per cent. debt tax, by the issuing of bonds dated July 1, 1900, having fifty years to run, with four per cent. per annum interest; and provided, that the proceeds of said bond should be placed under the supervision and control of the Board of Liquidation of the City Debt of New Orleans; and provided, that, after the vote of the said special tax, a special Sewerage and Water Board should be created for the purpose of constructing, controlling, maintaining and operating said water and sewerage system, etc. (Tr., pp. 9 and 10.)

Pursuant to this request from the property tax payers of the City of New Orleans, the Council of the City of New Orleans adopted Ordinance No. 15,214, C. S., approved April 26, 1899, which provided that a special election be called under the provisions of Article 232 of the Constitution of the State of Louisiana, and in accordance with Act No. 131 of 1898, on a date to be fixed by proclamation of the Mayor, submitting to the property tax payers the question of the voting of the tax, as outlined in the tax payers' petition. The election was duly held, and the property tax payers having approved the proposition to levy the special tax, the Council of the City of New Orleans, did by Ordinance No. 15,391 thereof, approved June 28, 1899, levy the said tax, under the terms and conditions set forth in the thirty-seven sections of said ordinance. (Pages 11 to 21, inclusive, of the transcript.)



Section 3 thereof, provided:

"That the proceeds of the said special tax shall be exclusively devoted in such ratio as may be required to the following purposes of permanent public improvement, to-wit:

"1. To acquiring title by the city by construction or purchase, or both, to a system of waterworks, to the extension thereof throughout the city, inclusive of the Fifth District, and to the purification of the water supply therefrom.

"2. To the construction throughout the city, inclusive of the Fifth District, **of a free water sewerage system, with free water therefor**, the title whereof shall be in the city.

"3. To the completion of the public drainage system of the City of New Orleans, inclusive of the Fifth District now in progress of construction."

And Sections 4 and 5 provided:

"For the funding and sale of said bonds, subject to the ratification of the State of Louisiana, and the people of the State of Louisiana, by an amendment to the Constitution of the State."

The said ordinance provided in detail for the obtaining of legislative and constitutional authority for the funding of said bonds, the placing of same in the hands of the Board of Liquidation, the creation of the Sewerage and Water Board, and the manner and method of its operation.

And Section 23 of said ordinance provided:

"That the said board shall have power to fix the rates to be charged to private consumers of

water, and to collect the same from all persons who use water (except for sewerage purposes only) from the public water supply of the City of New Orleans, except the City of New Orleans and her public institutions, such as jails, schools, etc., the Charity Hospital, the Touro Infirmary, the House of Good Shepherd, all orphan asylums and homes for aged and infirm." (Tr., p. 18.)

And Section 36 provided:

"That in the event that constitutional and legislative authority was not granted for the issuing of said bonds, prior to January 1, 1901, that the special tax should terminate."

In order to get the legislative and constitutional authority to make efficacious the provisions of said ordinances, an extra session of the Legislature of the State of Louisiana was called, and Act No. 6 thereof was adopted and approved on the 6th day of June, 1899. The act is identical in its terms with the said ordinance No. 15,391, levying the tax; and Section 21 of said act is identical in phraseology with Section 23 of the said ordinance.

Section 35 of Act 6 provided:

"That as it is proposed to have this act ratified by an amendment to the Constitution, it is hereby specially declared to be the intent of this act, and of said ratifying constitutional amendment, that the General Assembly reserves the right and power to amend this act in any respect not violative of the conditions upon which the said special tax was voted by the property tax payers

of the City of New Orleans and not **impairing the vested rights or the contract rights of the holders of the bonds issued under its provisions.**"

And at the same session of the General Assembly the following amendment to the Constitution of the State of Louisiana was proposed and adopted by the people, to-wit:

"The special tax for public improvement voted by the property tax payers of the City of New Orleans on June 6, 1899, and levied by the City Council by Ordinance No. 15,391, approved June 22, 1899, is hereby ratified and its validity shall never be questioned. The special act adopted by the Legislature at the special session held on August 8, 1899, constituting the Sewerage and Water Board of the City of New Orleans, to issue bonds, and providing the means to pay the principal and interest thereof, and for other purpose cognate to the purposes of the special tax aforesaid, is hereby ratified and approved, **specially including the therein reserved legislative right to amend the same;** and all provisions of the present Constitution in conflict with the provisions of the said act, and this amendment, are to that extent, and for the purpose only, repealed."

In 1908 the General Assembly of the State of Louisiana passed Act 270, which provided:

"Section 1. Be it enacted, by the General Assembly of the State of Louisiana, That whenever the public water plant of the City of New Orleans, now in process of construction by the Sewerage and Water Board, shall have been completed and

put into operation, the said board shall have the power, and it shall be its duty, by proper ordinances and regulation to be adopted by it, to require all inhabited premises in the City of New Orleans to be connected with the mains of said system, **and to take therefrom at least such water supply as shall be used on said premises for drinking and domestic purposes, exclusive of sewerage, at rates to be fixed, in virtue of the powers heretofore vested in said board.**

“Section 2. Be it further enacted, etc., That said board shall have power to cause the abolition and removal of all cisterns and tanks, and the closing of all wells (except artesian wells), and other water receptacles situated on improved premises, and shall have power to regulate the use thereof; provided, that none of the regulations established by it shall contravene the health ordinances of the City of New Orleans.

“Section 3. Be it further enacted, etc., That all ordinances and regulations enacted by the said board, under the powers herein granted, may be enforced by the infliction of the penalties provided in Act No. 6 of the Extra Session of 1899, and its amendments; and said board, after putting the owner in default, by written notice commanding him to comply within ten days, shall also have the power to do, or to cause to be done, upon the defaulting premises, that which its ordinances and regulations require, at the cost and expense of the owner, and such cost and expense shall be a lien on said premises, equal in rank to the lien of taxes, to take effect as to third persons on the recording in the Mortgage Office of the bill therefor, sworn to by the superintendent of the board, the charge for which recording shall not exceed twenty-five cents (25) for each bill.

“Section 4. Be it further enacted, etc., That the owners of all premises shall be primarily liable for all water rates assessed against such premises for water used for all purposes, **except sewerage**; and the rates assessed against each premise for water used shall be a lien thereon for three years equal in rank to the lien of taxes, to take effect against third persons on the recording of past due bills in the Mortgage Office, the charge for which recording shall not exceed twenty-five (25) cents for each bill.

“Section 5. Be it further enacted, etc., That all liens recorded, as above provided, shall be canceled on the production of the receipted bills, at a charge not to exceed twenty-five (25c.) for each bill.”

By virtue of the authority vested in the Sewerage and Water Board under the provision of Section 23 of Ordinance No. 15,391, and Section 21 of Act No. 6 of the Extra Session of 1899, the Sewerage and Water Board adopted rates to be charged to private consumers (Tr., pp. 59 to 64), and provided “That each permanent occupant in private residence, hotel, or boarding house, will be allowed for flushing closets 1,000 gallons of water per quarter”; or an average of about 11 3/4 gallons per day; and provided for free water for sewerage purpose in other places. (Tr., p. 61.)

Said rules also provided that in case the consumers were dissatisfied with the allowance for sewerage purposes, that a separate meter would be installed. (Tr., p. 62.)

The present action was brought in the Civil District Court for the Parish of Orleans, by the New Orleans Tax

Payers' Protective Association, and the individual members thereof, constituting a number of property tax payers of the City of New Orleans. The complaint urged by them is that the property tax payers of the City of New Orleans, voted upon themselves a special tax of two mills, for a period of forty-three years, on the condition that the same would be devoted to the three purposes set forth in the petition of the property tax payers; and that one of the said purposes was the construction, throughout the city, inclusive of the Fifth District, of a free water system, with free water therefor, the title whereof shall be in the city; that the voting of the tax, the city Ordinances Nos. 15,214 and 15,391, providing for the election and levying the tax, and Act 6 of 1899, constitute a contract between the State and the property tax payers, and that the terms of said legislation form obligations of the contract; and that the said Act No. 270 of 1908, and the said rules of the Sewerage and Water Board, wherein they attempt to charge the property tax payers rates for the consumption of domestic water, other than that for flushing closets, impairs the obligation of the contract entered into between the State and the property tax payers when they voted said tax, and is, therefore, violative of paragraph 10, Article 1, of the Constitution of the United States.

Complaint was further made that said Act 270 of 1908 was unconstitutional, in so far as it attempted to control the abolition of cisterns, and denied them the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States. But, as no attempt was ever made to abolish cisterns,

plaintiffs abandoned this portion of their action. (See plaintiff's brief, p. 7.)

Judgment was rendered in the District Court, dismissing plaintiff's demand. (Tr., pp. 67, 68, 69.)

An appeal therefrom was taken to the Supreme Court of the State of Louisiana, and a judgment was rendered therein affirming the judgment of the Civil District Court for the Parish of Orleans; thereupon plaintiffs sued out a writ of error to this Honorable Court.

### ARGUMENT.

It will be observed at the outset that the purposes in voting the tax were three-fold, to-wit:

“(1) To acquire title by the city by construction or purchase, or both, to a system of waterworks; to the extension thereof throughout the city, inclusive of the Fifth District, **and to the purification of the water supply therefrom;**

“(2) To the construction throughout the city, inclusive of the Fifth District of a free water system, **with free water therefor**, the title whereof shall be in the city;

“(3) To the completion of the public drainage system of the City of New Orleans, inclusive of the Fifth District, now in process of construction”;

and that the only mention of free water is in the following language “of a sewerage **system**, with free water **therefor**” (paragraph 2, Property Tax Payers' Petition,



page 9 of transcript); and that after the voting of the tax, the ordinance levying same, provided:

"That the proceeds of the said special tax shall be exclusively devoted in such ratio as may be required to the following purposes of permanent public improvement, to-wit:

"1. To acquiring title by the city by construction or purchase, or both, to a system of water works, to the extension thereof through the city, inclusive of the Fifth District, and to the purifications of the water supply therefrom.

"2. To the construction throughout the city, inclusive of the Fifth District, of a free sewerage system, with free water therefor, the title whereof shall be in the city.

"3. To the completion of the public drainage system of the City of New Orleans, inclusive of the Fifth District, now in process of construction" (Tr., p. 12);

and that the same ordinance, levying the tax, under Section 23 thereof (Tr., p. 18), provided:

"that the said board shall have power to fix the rates to be charged **private consumers** of water, and to collect the same from all **persons who use water (except for sewerage purposes only)** from the public water supply of the City of New Orleans, except the City of New Orleans and her public institutions, such as jails, schools, etc., the Charity Hospital, the Tesoro Infirmary, the House of Good Shepherd, all orphan asylums and homes for aged and infirm, etc."

That the same language contained in Section 23 of the Ordinance No. 15,391 (Tr., p. 18, is also contained liter-

ally in Section 21 of Act 6 of the Extra Session of 1899, p. 43 Addenda plaintiff's brief); so that it is obvious that under the provisions of the ordinance levying the tax, and Act No. 6 of 1899, carrying same into effect, the Sewerage and Water Board was authorized to **fix the rates to be charged to private consumers of water**, and to collect same from **all persons who use water (except for sewerage purposes only)** from the public water supply of the City of New Orleans; and to compel the connection to all sewerage systems, etc., and that the only water excepted from the water rates fixed by the ordinance and this section, was the water for the **free sewerage system**.

It is perfectly obvious that Act 270 of 1908, made no alteration whatever in the law, under the ordinance levying the tax, or under Act 6 of 1899, carrying same into effect, except in so far as it made the taking of water for domestic purposes, other than **sewerage**, compulsory and not optional; and except in so far as it provided for the abolition of cisterns. It added nothing whatever to the authority of the board to charge **water rates** to private consumers; thus it provided:

"That all premises should be connected to the water mains," and "that they should take therefrom at least such water supply as shall be used in said premises for drinking and domestic purposes, **exclusive of sewerage**, at rates to be fixed, in virtue of the powers heretofore vested in said board."

Therefore, any rates for water charged to private consumers by the Sewerage and Water Board, were charged

"in virtue of the powers heretofore granted in said board," i. e., in virtue of the authority granted by Section 23 of Ordinance No. 15,391; and in virtue of Section 21, of Act 6 of 1899, which plaintiffs claim form their contract, and not in pursuance of any authority granted by Act 270 of 1908.

Section 23 of Ordinance No. 15,391, and Section 21 of Act 6 of 1899, authorize the board to fix the rates

**"to be charged to private consumers and to collect the same from all persons who use water, except for sewerage purposes only."**

Whereas, Act 270 of 1908, only authorized the board to compel the taking of at least such water supply as shall be used on said premises for drinking and domestic purposes, **exclusive of sewerage**. It is because of the fact that the Legislature, in referring to that portion of the water used on the premises for "domestic" purposes other than sewerage, called it "drinking and domestic, exclusive of sewerage," that plaintiffs have conceived the idea that the Legislature has invented a new kind of water, and that "domestic" water and "sewerage" water are convertible terms. We know of no better name with which to characterize the water used on the premises, and for which the Ordinance and Act 6 of 1899 authorized the board to charge, than to call it "drinking and domestic," "exclusive of sewerage."

While all sewerage water which goes through the premises is "domestic," all "domestic" water is not "sewerage water" unless made so by subsequent use.

From the foregoing, three questions of law suggest themselves:

(1) Did the voting of the special tax by the property tax payers of the City of New Orleans, for the three-fold purposes set forth in their petition, together with the ordinances, laws and constitutional amendments voted thereunder constitute a contract between the property tax payers and the State?

(2) If the voting of the tax created a contract in favor of the property tax payers, and the obligations of the contract are contained in said ordinances, laws and constitutional amendment, is there anything under the provisions of Act 270 of 1908, which are in conflict with, or in any respect violative, of the obligations thereof?

(3) Did the Supreme Court of the State of Louisiana, give any force or effect to any of the provisions of Act 270 of 1908, which impairs the obligations of the contract between the property tax payers and State; and consequently has any Federal question arisen?

### **FIRST.**

#### **Is There Any Contract?**

Plaintiffs have advanced no argument whatever in support of their contention that a contract resulted in favor of the property tax payers in the voting of the tax. They have merely assumed same to be true.

The right of taxation is at the fountain source of the police power of the State, and we are unable to conceive upon what theory plaintiff supposes a contractual relation to exist. Assuredly, no contract was made expressly, except **quo ad**, the persons who purchased the bonds.

This is strongly evidenced by the provisions of Section 35 of Act 6 of 1899, wherein it reserves to the Legislature the power to amend the act in any respect not violative of the conditions upon which the special tax was voted by the property tax payers of the City of New Orleans; and yet the same section, when dealing with the right of the bond holders, inhibits any amendment from impairing the vested rights or the **contract rights** of the holders of the bonds, indicating clearly that it was intended that the bond holders alone should have a contract; and the constitutional amendment ratifying and approving same, contained this provision,

**"is hereby ratified and approved, specially including the therein reserved legislative right to amend the same."**

Were the tax levied directly by the sovereign authority without consulting the people, there would be no contention that a contractual relation arose, as no one would seriously contend that when a State levied a tax, the citizens acquired contractual rights. It is contended however, that because the State Constitution limited the aggregate of municipal taxes, and permitted the citizens to have a voice in determining whether an additional tax should be levied, that **quo ad** additional taxes,

a contract was created. This is clearly untenable. The fact that the State Constitution fixed the aggregate of taxes, and then gave the people a voice in determining whether an additional tax should be levied would not change the nature of the transaction. This grant to the people is a mere gratuity in the exercise of sovereignty; no consideration moved to the State, other than the general public welfare. The imposition of the tax through the voice of the people creates only a moral obligation on the part of the State to carry out the conditions thereof. As has been well said by this Court:

“The taxing power is vital to the functions of government. It helps to sustain the social compact and to give it efficacy. It is intended to promote the general welfare. It reaches the interest of every member of the community. It may be restrained by contract in special cases for the public good, where such contracts are not forbidden. But the contract must be shown to exist. There is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists it is to be rigidly scrutinized, and never permitted to extend, either in scope or duration beyond what the terms of the concession clearly require. It is derogative of public right, and narrows a trust created for the good of all.”

**Tucker v. Ferguson, 22 Howard, page 575.**

**West Wisconsin R. R. Co. v. Supervisor, 100 U. S., page 597.**

The Sewerage and Water Board of New Orleans, was created a public corporation (Section 8, Act 6 of 1899,

page 37 of plaintiff's brief, also Section 11 of Ordinance No. 15,391, trans., p. 15).

**State ex rel. Saunders v. Kohnke, 108 La., p. 838.**

This was done pursuant to the petition of the property tax payers (paragraph 9, tax payers petition, trans., 10).

It was charged with the duty of "constructing, maintaining, controlling and operating the public water system; the public sewerage system and the drainage system of the City of New Orleans." (Section 8 of Act 6 of 1899, page 37 plaintiff's brief.) Title to all of its property is vested in the City of New Orleans. (Section 17, Act 6 of 1899, page 41. Property tax payers petition, trans., 9. Section 3 of Ordinance 15,391, trans., 11.)

It is therefore the mere administrative agent of the City of New Orleans, *quo ad* sewerage, water and drainage. While a separate corporation its functions are purely municipal and it takes the status of a municipal corporation.

Its charter, except where restricted by the State Constitution is subject to the same control as is the charter of the City of New Orleans.

The right of the General Assembly to alter a municipal charter is no longer an open question.

**Hunter v. Pittsburg, 207 U. S., p. 161 (177).**

Counsel for plaintiffs states in his brief, (pages 14 and 15) that the Supreme Court of the State of Louisiana, *State ex rel Saunders v. Kohnke, 109 La., p. 838, (33 Southern Reporter, page 793)* maintained the contract rights of the citizen tax payers. The statement is er-



roneous. The case was decided in 1903, consequently five years before Act 270 of 1908 was adopted. The Supreme Court of the State of Louisiana held specifically that **no** contract existed in favor of the citizen tax payers of the City of New Orleans.

“The tax payers of the City of New Orleans voted upon themselves a tax for providing systems of sewerage and water for their city, coupling with the vote of the tax certain conditions to carry out which a legislative act, and also a constitutional amendment was adopted. No consideration moved to the State in the matter other than such as underlies all legislation—the general public welfare. Among the conditions of the tax was that a special board should be created to have charge of the water and sewerage work. After the tax had been levied, and bonds had been issued, and the work had been put under way, the Legislature, by another act, undertook to change the organization of the said special board. Held, that it was not precluded from so doing by any contract rights accruing to the tax payers as a result of the said proceedings; there having been, in the first place, no intention to enter into a contract, and no contract arising by implication; and, in the second place, the statute creating the said special board having been one relating to public subjects within the domain of the general legislative power of the State, and involving public rights and the public welfare.” (Syllabus of the Court.)

They held in that case that while no contract existed the conditions of the tax were embodied in the organic law; and that the reserved right of the Legislature to amend, did not extend to the conditions of the tax.

In **Hunter v. Pittsburg**, 207 U. S., p. 160 (177), 28 Supreme Court Rep., pp. 45, and 46, wherein it was contended that a contract existed in favor of the citizen tax payers, your Honorable Court said:

“Briefly stated, the assertion in the second assignment of error is that the act of assembly impairs the obligations of a contract existing between the City of Alleghany and the plaintiffs in error, that the latter are to be taxed only for the governmental purposes of that city, and that the legislative attempt to subject them to the taxes of the enlarged city violates Article 1, Section 9, Paragraph 10, of the Constitution of the United States. This assignment does not rest upon the theory that the charter of the city is a contract with the State, a proposition frequently denied by this and other Courts. It rests upon the novel proposition that there is a contract between the citizens and tax payers of a municipal corporation and the corporation itself, that the citizens and taxpayers shall be taxed only for the uses of that corporation, and shall not be taxed for the uses of any like corporation with which it may be consolidated. It is not said that the City of Alleghany expressly made any such extraordinary contract, but only that the contract arises out of the relation of the parties to each other. It is difficult to deal with a proposition of this kind except by saying that it is not true. No authority or reason in support of it has been offered to us, and it is utterly inconsistent with the nature of municipal corporations, the purposes for which they are created and the relation they bear to those who dwell and own property within their limits. This assignment of error is overruled.”

## SECOND.

### Act 270 of 1908 Adds no Additional Power Over Water Rates to Sewerage and Water Board.

Neither Act 270 of 1908, nor any rules adopted by the Sewerage and Water Board violate any of the obligations of the contract of the citizen tax payers, **assuming arguendo** that they have a contract. The rules were not adopted in pursuance of said act, but were adopted in pursuance of Section 23, of Ordinance No. 15,391, and Section 21 of Act 6, of 1899; and could not have been adopted in pursuance of Act 270 of 1908, because **said act** did not authorize the imposition of any rates, except in pursuance of the authority previously granted. The act merely affirms the right of the board to impose rates under the authority and power **heretofore** vested in the board.

The learned counsel for plaintiffs and appellants has become much confused, and his confusion is caused by his inability to appreciate the distinction between the water necessary to carry off solid matter, which is all that is necessary for a sewerage system and water, which pure in its initial entrance to a household, becomes sewerage only after being used for certain purposes.

Counsel for appellants contend that all water, no matter how pure initially, which the householder cares to use for any purpose, which may ultimately go into the sewerage system, becomes sewerage water necessary for the sewerage system. Whereas, the experts upon this

subject logically agree that the only water necessary for a sewerage **system** is such water as is necessary to carry off the solid or suspended matter, and that water pure initially cannot be called sewerage water simply because it suits the householder to make sewage out of it; unless the use of the water is intended for flushing or carrying off purposes.

As is well put by the Judge of the Civil District Court:

“There has been much evidence and expert opinion as to the meaning of water for sewerage. I understand that sewerage water is such as is used for the removal from residential premises of the accumulation of refuse matter or excrements, all more or less solid, which are lodged in vaults or drains or privies of the residences. Drinking water, water for baths or other domestic purposes, pure and clean before use, but which after use find their way to the sewers, as it seems to me in the sense and meaning of these special laws, are not sewerage waters when furnished for use by the Sewerage and Water Board, and, if not, there is no guaranty or contract that they shall be furnished free of charge.” (Opinion of Court, Tr., pp. 56 and 57.)

It is useless to detail the testimony of the experts introduced in this case. Counsel for plaintiff has incorporated in his brief excerpts from the testimony of Messrs. Herring and Earl, which segregated, (as he has caused them to be) from the context of their testimony would seem to lend some color to his argument, but a simple reading of the testimony of the experts

(which is short) can leave no doubt that the conclusion expressed by the learned Judge of the Civil District Court, is the only one to be deduced from their testimony.

It will be observed that the rules and regulations of the Sewerage and Water Board, as then existing, allowed eleven and  $\frac{3}{4}$  gallons free use for sewerage purposes, and both experts testified that the quantity was amply sufficient. The rules also provided that those desiring to make separate connections for the privies could do so and have an unlimited supply therefor, subject only to reasonable regulations to prevent waste. The experts have all testified that these connections with the privies were the only connections wherein water was necessary in the household for sewerage purposes, and that all of the other water used in the household which ultimately went into the sewerage system would flow of its own accord. Experts have testified that a certain amount of soil water goes into the sewerage system, which in connection with the flushing from the privies, allowed free, is the only water necessary for the sewerage system, and, unquestionably, this is what was intended by the petitioning tax payers in their petition for a sewerage system with free water therefor. Otherwise, it would be difficult to see what could be intended by Section 21 of Act 6 of 1899.

In this connection, we desire to state that a construction which would make free, as being for sewerage purposes all water, pure before use, drunk upon the premises, which ultimately finds its way into the sewerage as urine; all water which, pure before its use, becomes pol-

luted by use and through the kitchen sink finds its way into the sewerage system, and all water, pure before its use, polluted by bathing purposes, which ultimately finds its way into the sewerage system; and all water, pure before use, utilized for cooking purposes, and which ultimately finds its way into the sewerage system, could be held to be water necessary for the use of the sewerage system, would be tantamount to holding that all water susceptible to pollution, which could possibly get into the sewerage system, was free. There would then be absolutely no consumption of water upon which to place the tax provided by Section 21 of Act 6 of 1899, and as the avails of the City of New Orleans for said purposes are greatly inadequate, the very object and purpose of the voters of the tax would be destroyed by inability on the part of the city to make the necessary appropriations. This was thoroughly understood at the time the tax was voted, and it was never contemplated that any water should be free, except that exclusively necessary for the sewerage system—that is, the carrying off of excrement, solid or semi-solid matter, and the City of New Orleans was charged only with the duty of making appropriation for the maintenance and operation of the sewerage, drainage and water system over and above the amount realized from the tax on water (Section 28), which shows conclusively that it was contemplated by the voters of the tax that all other class of water was subject to the water rate.

**3rd. Has a federal question arisen so as to confer jurisdiction on this Court?**

The judgment of the Civil District Court for the Parish of Orleans, gave no force or effect whatever to Act 270 of 1908, as adding anything to the powers of the Sewerage and Water Board, **quo ad** the imposition of water rates, but assumed *arguendo* that the property tax payers had rights (not necessarily contractual) and determined that their rights consisted of a free water system, and free water therefor; and construed same to mean the water necessary for the system proper; which meant merely the water necessary to flush toilets in carrying off refuse matter, or excrementa, and all solid substances; and necessarily excluded drinking water, or water used for cooking, washing, bathing and other domestic purposes (Tr., pp. 67, 68, 69).

The judgment of the Supreme Court affirmed the judgment of the lower Court. Neither in the decree, nor in the reasons for judgment is any force or effect given to Act 270 of 1908, as adding to the power and duty of the board, **quo ad** water rates to be charged private consumers, for domestic purposes. The judgment is obviously confined to an interpretation of the language of the original petition of the property tax payers; the ordinances enacted thereunder and Act 6 of 1899, carrying same into effect. Therefore, any error existing in the judgment of the Supreme Court of the State of Louisiana, concerns only the interpretation of the original obligation; and the correction thereof is not within the grant of power to this Honorable Court.

**Cross Lake Shooting and Fishing Club v.  
State of Louisiana, 224 U. S., p. 632;**



Missouri Kansas Interurban Railway Company v. City of Olothe, 222 U. S., p. 187;  
Fisher v. New Orleans, 218 U. S., p. 439;  
Hubert v. New Orleans, 215 U. S., 175;  
New Orleans Water Works v. Louisiana, 185 U. S., p. 336;  
Weber v. Rogan, 188 U. S., p. 14;  
Central Land Co. v. Laidly, 159 U. S., p. 103;  
Missouri & Kansas Interurban Railway Co. v. Kansas, 222 U. S., p. 187;  
New Orleans Water Works v. La. Sugar Rfg. Co., 125 U. S., p. 38;  
Mobile Jackson Railroad Co. v. Mississippi, 210 U. S., p. 187;  
Bacon v. Texas, 163 U. S., p. 207.

Respectfully submitted,

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Board of New Orleans.

**ADDENDA.****Article 232, Constitution of Louisiana:**

“The State tax on property for all purposes whatever, including expense of government, schools, levees and interest, shall not exceed, in any one year, six mills on the dollar of its assessed valuation, and, except as otherwise provided in this Constitution, no parish, municipal or public board tax for all purposes, whatsoever, shall exceed in any one year ten mills on the dollar of valuation; provided, that for giving additional support to public schools, and for the purpose of erecting and constructing public buildings, public school houses, bridges, wharves, levees, sewerage work and other work of permanent public improvement, the title to which shall be in the public, any parish, municipal corporation ward or school district may levy a special tax in excess of said limitation, whenever the rate of such increase and the number of years it is to be levied and the purposes for which the tax is intended, shall have been submitted to a vote of the property tax payers of such parish, municipality, ward or school district entitled to vote under the election laws of the State, and a majority of the same in numbers, and in value voting at such election shall have voted therefor.”

# **Supreme Court of the United States.**

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**No. 192.**

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**NEW ORLEANS TAXPAYERS,  
versus  
SEWERAGE AND WATER BOARD OF NEW ORLEANS.**

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**OCTOBER TERM 1914.**

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**SUPPLEMENTAL BRIEF ON BEHALF OF THE TAX-  
PAYERS, PLAINTIFFS IN ERROR.**

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During the course of the argument, in this Court, it developed that your Honors were not entirely satisfied with the mere statement of Plaintiff's Counsel that they based their petition for relief on the fact that they stood on a contract right protected by the Constitution of the United States which could not be impaired by the State Legislature.

We stated that the question was a very important one to the taxpayers and we need not give, any reason outside of the Record.

The New Orleans taxpayers, in fact, as your Honors will perceive by the record, petitioned the Council of the

City of New Orleans to obtain for them, chartered rights, which would be embodied in the Constitution of the State as a part thereof.

Their petition with all the conditions attached, was granted; a charter was given them, the Sewerage and Water Board were created, the taxes were paid and extensive water and sewerage works were established.

The present Sewerage and Water Board is the successor of the New Orleans Water Works, with enlarged powers.

The Charter of the New Orleans Water Works Co. was granted by the Legislature of the State of Louisiana in 1877, Act No. 33 of the extra session p. 51, which we have copied in full in the appendix.

By this Charter the New Orleans Water Works Co. was given the exclusive privilege; of furnishing water to the inhabitants of the City.

The Constitution of 1879, sought to take away this exclusive privilege; the water works complained of the violation of their chartered rights. The lower Court maintained a demurrer to their bill setting up this contention.

When the case came up, before this Court, your Honor reversing the judgment of the lower Court said:

“And as the object to be attained was a public one, for which the State could make provision by legislative enactment, the grant of the franchise could be accompanied with such exclusive privileges to the grantee, in respect of the subject of the grant, as in the judgment of the Legislative department would best promote the public health and the public comfort, or the protection of public and private property. Such was the nature of the plaintiff's grant, which,

not being at the time prohibited, by the Constitution of the State was a contract, the obligations of which cannot be impaired by subsequent legislation, or by a change in her organic law. It is as much a contract, within the meaning of the Constitution of the United States, as a grant to a private corporation of public services to be rendered by it, of the exclusive right to construct and maintain a railroad within certain lines and between given points, or a bridge over a navigable stream within a prescribed distance above and below a designated point." 115 U. S. 680.—*New Orleans Water Works Co. vs. Rivers.*

Quoting *N. O. Gas Light vs La. Light Co.* 115 U. S. 650.

See also 120 U. S. 64—*St. Tammany Water Works vs. N. O. Waterworks Co.*

Approved in 164 U. S. 474 *N. O. Waterworks vs. New Orleans.*

This same principle was established since the Dartmouth case, 4 Wheaton 643, in a long line of decisions which have been uniformly followed by this Honorable Court.

The act of 1877 No. 33 p. 51 of the extra session which your Honors maintained as a contract, is entitled:

"An act to enable the City of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the New Orleans Water Works Co."

Now Act No. 6 of 1899, printed in full in Plaintiff's original brief at p. 30, is entitled:

"An act to make effective the vote and levy of the Special tax, \*\* by constituting and establishing a Sewerage and Water Board for the City of New Orleans and defining its powers, duties rights and obligations with reference to the public, the City Council the Board of Liquidation.

If this Court defines the former act as creating a contract under the Constitution of the United States, the latter act must be included in the same category.

In one case the private capital of the incorporators was used to carry out the objects of the act, in this case the voluntary payment and contribution of the taxpayers is the capital employed to perform the work.

Bonds were issued under both acts, and both were created for the same purpose excepting that the scope of the latter was greater than that of the former.

The Charter of the New Orleans Waterworks Co. was declared forfeited by the Supreme Court of Louisiana, because the Company violated the conditions imposed by its charter: it did not furnish clear water, as directed and it overcharged its customers, some to a greater extent and others to a less amount. A writ of error was taken to this Court and dismissed for want of jurisdiction.

107 *La. 3 State vs. New Orleans Water Works Co.*

185 *U. S. 336. New Orleans Waterworks Co. vs. State.*

The property erected, and constructed by the taxpayers, and their board, under the authority of this act was in no sense public property which the Legislature could take away from them, dispose of as they might wish.

It belongs to that species which is termed private property, which the Legislature cannot take away from its owners.

"Notwithstanding the power of the Legislature over the City of New Orleans, its property is protected like that of any other person. Story on the Constitution Sections 1393-1399. 2 *Peters* 380-412-627-657. 6 *Cranch* 67-134—4 *Hill* 144—3 *Dallas* 386—8 *Wend.* 85—18 *Wend.* 56-61-63—*Cooley on Limitations* 487—21 *Penn.* 147; 7 *Wall* 289."

27 A. 521—*N. O. Mobile & R. R. vs. City of New Orleans.*

By the 35 Section of the act chartering the Sewerage and Water Board the act reserves to the General Assembly the right and power to amend the act in any respect,

*"Not violative of the conditions upon which the said special tax was voted by the property tax payers of the City of New Orleans and not impairing the vested rights or the contract rights of the holders of the bonds issued under its provisions."*

Page 50—Plaintiff's original brief.

We are asking the Court to enforce one of the conditions of the petition of the property tax payers, which cannot be amended by the legislature.

Plaintiffs in error therefore pray that the judgment of the Supreme Court of Louisiana be reversed and that the act of the Legislature of 1908 No. 270 be annulled and set aside as prayed for.

Resply. submitted,

CHS. LOUQUE,

of Counsel.

Mch. 13th, 1915.



## APPENDIX.

## AN ACT OF 1877—EXTRA SESSION, PAGE 51.

No. 33.]

To enable the City of New Orleans to promote the public health and to afford greater security against fire, by the establishment of a corporation to be called the "New Orleans Waterworks Company;" to authorize the said company to issue bonds for the purpose of extending and improving the said works, and to furnish the inhabitants of New Orleans an adequate supply of pure and wholesome water; to permit the holders of Waterworks bonds to convert them into stock, and to provide for the liquidation of the bonded and floating debt of the City of New Orleans.

**Section 1.** *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That a corporation be, and the same is hereby created, to be styled "The New Orleans Waterworks Company," the capital stock whereof shall consist of two millions of dollars, which shall be divided into twenty thousand shares of one hundred dollars each.

**Sec. 2.** *Be it further enacted, etc.,* That immediately after the organization of the said Waterworks Company, as hereinafter provided, it shall be required to issue to the City of New Orleans, stock to the amount of six hundred and six thousand six hundred dollars, as full paid, and not subject to assessment; and in addition thereto, one similar share for every one hundred dollars of Waterworks bonds which said city may have taken up heretofore and extinguished by payment, exchange or otherwise; and that the residue of said capital stock shall be reserved for the benefit of all holders of Waterworks bonds, to the extent of the amount now outstanding, who may elect to avail themselves of the provisions of this Act; and the said Waterworks Company shall issue to the said City of New Orleans, to be exchanged with the holders of said bonds, one share of full paid stock not subject to assessment, for each and every one hundred

dollars of said Waterworks bonds; and the said bonds, as fast as surrendered and exchanged for stock as aforesaid, be cancelled; that for the purpose of effecting said exchange of outstanding Waterworks bonds for stock, as aforesaid, the City of New Orleans shall be entitled to all the certificates for the shares of said stock of said New Orleans Waterworks Company and shall, by advertisement for six months in two newspapers in the City of New Orleans and two newspapers in the City of New York, give notice that it will exchange said stock at par for said Waterworks bonds at par, exclusive of the overdue coupons attached to said bonds, which shall constitute a separate demand against said city; and in case any of the said bondholders shall fail or refuse to avail themselves of this Act within one year from the formation of said company, the said City of New Orleans shall not thereafter be required to make said exchange, but may retain the unused shares of stock for its own account and benefit, unless it shall prefer to continue to take up any of said outstanding bonds by exchange as aforesaid.

**Sec. 3.** *Be it further enacted, etc.,* That the said Waterworks Company shall be organized by the Mayor of the City giving thirty days' notice that he will receive subscriptions of bondholders who may agree to exchange their bonds for stock as aforesaid; and the said city shall at once subscribe for stock to the amount of six hundred and six thousand six hundred dollars, and such further amount as shall equal the par value of any of said Waterworks bonds, which shall have been extinguished by said city; and as soon as in addition to the subscription of said city there shall be subscribers for an exchange of said bonds for stock to the extent of five hundred thousand dollars, and the said amount of bonds shall have been actually surrendered to and cancelled by the Administrator of Finance, the said subscribers shall assemble together, on a day to be named by the Mayor, and shall elect a board of directors, to consist of seven persons, four of whom shall be designated by the Mayor, and the remaining three shall be elected by said subscribers, other than said city, from amongst themselves; and the persons thus designated and elected shall constitute the first board of directors, and shall continue in office until

the first of July, eighteen hundred and seventy-eight, and the said board shall elect one of their number as president.

**Sec. 4.** *Be it further enacted, etc.,* That as soon after the election of said board of directors as the City Council may determine, the Mayor of the City shall transfer, by notarial act, to said New Orleans Waterworks Company the waterworks and all the property appurtenant thereto.

**Sec. 5.** *Be it further enacted, etc.,* That the said Waterworks Company shall own and possess the privileges acquired by the City of New Orleans from the Commercial Bank; that it shall have for fifty years from the passage of this Act the exclusive privilege of supplying the City of New Orleans and its inhabitants with water from the Mississippi river, or any other stream or river, by means of pipes and conduits, and for erecting and constructing any necessary works, or engines, or machines for that purpose; that it may contract for, purchase or lease any land or lots of ground, or the right to pass over and enter the same from time to time as occasion may require, through which it may be necessary to convey the water into said city, or to distribute the same to the inhabitants of said city; and to construct, dig, or cause to be opened, any canals or trenches whatsoever, for the conducting of the water of the rivers from any place or places it may deem fit, and to raise and construct such dykes, mounds, reservoirs, as may be required for securing and carrying a full supply of pure water to said city and its inhabitants; to enter upon and survey such lands as it may think proper, in order to ascertain the best mode of furnishing a supply of water; to lay and place any number of conduits, or pipes, or aqueducts, and to cleanse and repair the same, through or over any of the lands or streets of the City of New Orleans; *provided*, the same shall not be an obstruction to commerce or free circulation; and also to have and use a common seal and alter the same at pleasure; to ordain and establish by-laws for its government and that of its officers and employees, not repugnant to this Act and the constitution of the State and of the United States, or the ordinances of the City of New Orleans.

**Sec. 6.** *Be it further enacted, etc.,* That on the first Monday of July, eighteen hundred and seventy-eight, and annually thereafter, an election for directors of said company, after ten days' notice of the time and place of holding the same, shall be held, at which election there shall be elected four directors by all the stockholders other than the City of New Orleans; and the Mayor of the city, the Administrator of Waterworks and Public Buildings and the Administrator of Finance of said City, shall be *ex officio* directors of said company; the said city, through its Mayor and Administrators, shall have the right to vote at the election of directors, and at all meetings of said stockholders, in the same manner as any other stockholders. That at all elections and all meetings of stockholders each share of stock shall be entitled to one vote. The directors elected shall serve for one year and shall hold their offices until their successors are appointed; and no failure to elect directors at the time designated shall prevent the board of directors from fixing another day for holding the election; and in case of vacancy in the board of directors occasioned by death, resignation or absence from the State or other cause, the board of directors may fill such vacancy for the remainder of the year.

**Sec. 7.** *Be it further enacted, etc.,* That the stock owned by said City of New Orleans in said Waterworks Company shall not be liable to seizure for the debts of said city.

**Sec. 8.** *Be it further enacted, etc.,* That the stock of said Waterworks Company may be increased to two millions of dollars, for the purpose of enabling said company to improve, enlarge and extend its works; *provided*, that the new or increased stock shall be paid for in cash, or in work done for the company; and in case of non-payment of instalments on stock subscribed for, the same may be forfeited to the use of said company.

**Sec. 9.** *Be it further enacted, etc.,* That the board of directors of said company shall have power, in addition to the authority to increase its capital stock, to borrow money for the purpose of improving and enlarging its works, and increasing the supply of pure water; and to accomplish this purpose the said board of directors are

hereby authorized to issue the bonds of the company to an amount not exceeding two millions of dollars, in such sums, on such terms and bearing such rate of interest, as said board may determine, and the payment of said bonds, in principal and interest, may be secured by a mortgage of all the property and franchises of said company, including its franchise to be a corporation, and said mortgage may include the property and franchises of said company, acquired or to be acquired, and the registration of said mortgage in the office of the Recorder of Mortgages for the Parish of Orleans shall operate on the property and franchises of said company, wheresoever situated, and shall be and continue a valid and subsisting mortgage until the payment of the debt secured by it, without re-inscription; *provided, however,* that no bond shall be issued, or mortgages given, without the consent of the Council of the City of New Orleans, and said bond shall not be sold or disposed of except on such terms as shall be approved by said Council of said city.

**Sec. 10.** *Be it further enacted, etc.,* That said company shall not declare or pay any dividends except in cash, and then only out of the net semi-annual or annual receipts, after payment of expenses of operation, and the interest on its bonded debt, nor shall any dividends be declared until the contemplated works are completed and in use.

**Sec. 11.** *Be it further enacted, etc.,* That the City of New Orleans shall be allowed to use water from the pipes and plugs of said company now laid, or hereafter to be laid, free of any charge, for the extinguishment of fires, cleansing of the streets, and for the use of all public buildings, public markets and charitable institutions, and that the said company shall place, free of any charge, whatever, two hydrants of the most approved construction in front of each square, where a main pipe shall be laid at a suitable distance from each other, from which a sufficient quantity of water may be conveniently drawn for the extinguishment of fires, for watering the streets and cleansing the gutters, and for any other public purpose; that on the squares which do not front on the river the hydrants shall be placed on opposite sides of the streets, at an equal distance from each other and the corners. It shall be

the duty of the said company, whenever main pipes shall be laid, to supply water for all the purposes herein mentioned at all times during the continuance of this charter; and in consideration thereof the franchises and property of said New Orleans Waterworks Company, used in accordance with this Act, shall be exempt from taxation—State, municipal and parochial.

**Sec. 12.** *Be it further enacted, etc.,* That the said Waterworks Company shall have the right in the City of New Orleans and its suburbs and adjoining lands, to use the streets and public places for the purpose of laying pipes and hydrants to run water; *provided*, that said streets shall not be obstructed longer than necessary for such purpose, or for making repairs, and that said streets shall be restored to the same condition they were in as soon as practicable, by the said company, under the supervision of the City Surveyor. In case the said Waterworks Company shall require any lot of ground in the city of New Orleans, or any lot of ground or quantity of land situated in any parish of this State for the purpose of constructing reservoirs or other works, or for the purpose of laying pipes to conduct water to the City of New Orleans, and shall not be able to agree with the proprietor or proprietors of said lot of ground or land, the said company shall have power to cause the same to be expropriated in pursuance of the general laws on the subject of expropriation for works of public utility now in force, or which may hereafter be enacted, and if the object of said company be merely to lay pipes through a piece of land or lot of ground, the expropriation shall be confined merely to the servitude it may require, and not to the right of absolute ownership.

**Sec. 13.** *Be it further enacted, etc.,* That the said Waterworks Company, immediately after its organization, shall proceed to the erection of new works and pipes sufficient in capacity to furnish a full and adequate supply of water, to be drawn from the Mississippi River, or elsewhere, as may be judged most expedient; that said new works and pipes shall be commenced within twelve months from the passage of this Act, and shall be year by year completed, so that, within five years from the date of this Act, they shall be completed so as to give an adequate

supply of water to the people of the City of New Orleans, exclusive of the Fifth District. If said work be not done as above prescribed, said corporation shall forfeit all exclusive privileges granted herein, and the city shall have a right to contract with any one else for a supply of water as above provided, and to expropriate the property of the corporation hereby created. After the completion of the new works and pipes, the said company shall, from time to time, as the wants of the population may require, and when the estimated revenue on the cost of such extension shall equal ten per centum, extend their works throughout the entire limits of the city and suburbs, and any future extension of said city; and any failure by said Waterworks Company to comply with this provision shall work a forfeiture of this charter.

**Sec. 14.** *Be it further enacted, etc.,* That the City of New Orleans, through its Council, shall have authority to apply the stock subscribed for by said city, as herein provided, to the reduction of the bonded or floating debt of the said city, on such terms of adjustment as may be mutually agreed upon between the City Council and the holders of such bonded or floating debt; *provided*, said stock shall not be sold at less than par, and that when sold for obligations of the city, it shall only be under sealed proposals, after not less than fifteen days' advertisement in two daily papers, to the bidder who shall offer said obligations at the most advantageous rate, the Council reserving the right to reject any and all bids.

**Sec. 15.** *Be it further enacted, etc.,* That the said Waterworks Company shall have the right to fix the rates of charges for water; *provided*, that the net profits of the company shall not exceed ten per cent. per annum, and shall publish sworn annual statements of its business and condition; and that the City Council shall have the power to appoint a committee, of not less than five, who shall have access to the books of the said company, and make such extracts from the same as they may deem necessary, and in case the said profit shall exceed ten per cent., the City Council shall have the right to require said company to reduce the price of water in such manner, and in such a proportion, that the profits shall never exceed the above named rates; *and provided further*, that



the rates charged shall never exceed those now paid by the city, and in case said company shall refuse compliance, the demand of said city may be enforced by a writ of mandamus.

**Sec. 16.** *Be it further enacted, etc.,* That if any person or persons shall obstruct the said company, their successors, agents, workmen or servants, in conveying the said water into the said city and its suburbs, or shall change, alter, remove, injure or destroy any work or part of a work made by the said company, or cause to be made, for the purpose of introducing water into the City of New Orleans, under the authority of this Act; or if any person shall alter, change or pollute the water or stream which the said company shall hereafter introduce, or be preparing to introduce, such person or persons shall be indicted in the proper court for the trial of such offense, and being thereof convicted, shall be fined at the discretion of the Court, according to the nature of the offense, and imprisonment for a term not exceeding seven years, such fine to be paid and applied to the use of said company.

**Sec. 17.** *Be it further enacted, etc.,* That until other works are constructed by which the present works may be dispensed with the same shall remain under the control of the City Council, and the superintendence thereof remain in the hands of the Administrator of Waterworks and Public Buildings; but the said company shall be authorized to collect the revenues thereof and apply them to the expense of operating and extending the works. At the expiration of fifty years from the organization of the company, the city shall have a right to buy the works, conduits, pipes, etc., of the company, at a valuation to be fixed by five experts; two to be named by the city, two by the company, and the four to select the fifth expert; but should the city neglect or refuse to purchase said works, etc., as above provided, the charter of the company shall be *ipso facto* extended for fifty years longer, but without any exclusive privilege or right to supply water, according to the provisions of the charter.

**Sec. 18.** *Be it further enacted, etc.,* That nothing in this Act shall be so construed as to prevent the City Council from granting to any person or persons, contiguous to

the river, the privilege of laying pipes to the river, exclusively for his own or their own use.

(Signed) LOUIS BUSH,

Speaker of the House of Representatives.

(Signed) LOUIS A. WILTZ,

Lieutenant Governor and President of the Senate.

Approved March 31, 1877.

(Signed) FRANCIS T. NICHOLLS,

Governor of the State of Louisiana.

A true copy:

WILL A. STRONG,

Secretary of the State.



**NEW ORLEANS TAX PAYERS' PROTECTIVE ASSOCIATION *v.* SEWERAGE AND WATER BOARD OF NEW ORLEANS.**

**ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.**

No. 192. Argued March 11, 1915.—Decided April 5, 1915.

The fact that water used for drinking and bathing goes into the sewer after it has been used does not make it water for sewerage purposes. Act No. 270, Louisiana, of 1908, and ordinance of the City of New Orleans thereunder establishing rates for water for drinking and domestic purposes other than sewerage is not unconstitutional as impairing the obligation of the statute of August, 1897, providing for free water for sewerage purposes.

Where the later Act complained of goes no farther than the prior act, the obligation of whose contract is claimed to have been impaired, there is no ground for invoking the jurisdiction of this court under § 237, Jud. Code, and the writ will be dismissed.

THE facts, which involve the constitutionality under the obligation of contract clause of the Federal Constitution of certain statutes of Louisiana and ordinances of New Orleans relative to drainage and water supply, are stated in the opinion.

*Mr. Charles Louque* for plaintiff in error:

The taxpayers' petition for building a free sewerage system with free water therefor was understood to mean free water to all tax payers, connected to sewers. All fixtures used for cleansing purposes connected to sewers are entitled to free water. The Legislature had no power to alter this intent and impair the obligations of this contract by substituting the word domestic water. As to the status of the water companies see *New Orleans Water Co. v. Rivers*, 115 U. S. 680; *N. O. Gas Co. v. La. Light Co.*, 115 U. S. 650; *St. Tammany Water Works v. N. O. Waterworks*, 120 U. S. 64; *S. C.*, 164 U. S. 474.

Act No. 6 of 1899 created a contract under the Constitution of the United States.

The charter of the New Orleans Waterworks Co. was declared forfeited by the Supreme Court of Louisiana, because the company violated the conditions imposed by its charter: it did not furnish clear water, as directed, and it overcharged its customers, some to a greater extent and others to a less amount. A writ of error was taken to this court and dismissed for want of jurisdiction. *State v. New Orleans Water Co.*, 107 Louisiana, 3; *New Orleans Waterworks v. State*, 185 U. S. 336.

The property erected, and constructed by the tax payers, and their board, under the authority of this act was in no sense public property which the legislature could take away from them, and dispose of as they might wish.

It belongs to that species which is termed private property, which the legislature cannot take away from its owners. See cases cited in *N. O., Mobile &c. R. R. v. New Orleans*, 27 Louisiana, 521.

By § 35 of the act chartering the Sewerage and Water Board the act reserves to the General Assembly the right and power to amend the act in any respect not impairing the vested rights or the contract rights of the holders of the bonds issued under its provisions.

237 U. S.      Argument for Defendant in Error.

The court should enforce one of the conditions of the petition of the property tax payers, which cannot be amended by the legislature.

*Mr. Walter L. Gleason*, with whom *Mr. Isaiah D. Moore* was on the brief, for defendant in error:

The contract clause of the Federal Constitution is not directed against all impairments of contract obligations, but only against such as result from a subsequent exertion of the legislative power of the State. *Cross Lake Club v. Louisiana*, 224 U. S. 632.

When the state court gives no effect to the subsequent law, but decides on grounds independent of that law, that the right claimed was not conferred by the contract claimed to have been impaired, the case stands as though the subsequent law had not been passed and the court has no jurisdiction. *Missouri-Kansas Ry. v. Olathe*, 222 U. S. 187; *Fisher v. New Orleans*, 218 U. S. 439; *Hubert v. New Orleans*, 215 U. S. 175; *New Orleans Water Works v. Louisiana*, 185 U. S. 336; *Weber v. Rogan*, 188 U. S. 14; *Central Land Co. v. Laidly*, 159 U. S. 103; *Missouri &c. Ry. v. Kansas*, 222 U. S. 187; *New Orleans Water Works v. Louisiana Sugar Co.*, 125 U. S. 38; *Mobile R. R. v. Mississippi*, 210 U. S. 187; *Bacon v. Texas*, 163 U. S. 207.

Where the constitution of the State provides, as it does in this instance, for a special tax after an election and in pursuance thereof an election was held and the property tax payers of the municipality voted upon themselves a special tax for a specified period for the purpose of constructing, maintaining and operating a sewerage, water and drainage system, the voting of the tax and the levying of same does not constitute a contract between the citizen tax payers and the State. No consideration moves to the State, other than the general public welfare; and the imposition of the tax is an exercise of a fundamental sovereign power. *Saunders v. Kohnke*, 109 Louisiana, 838; *Hunter*

v. *Pittsburg*, 207 U. S. 161; *Tucker v. Ferguson*, 22 How. 575; *West Wisconsin Railway v. Supervisor*, 100 U. S. 597.

The grant by the General Assembly of a charter to a municipal corporation, for the purpose of constructing, controlling, maintaining and operating the public water system, the public sewerage system and the drainage system of the City, title whereof shall be in the City, does not constitute a contract with the State, and the charter is subject to legislative control, except where restricted by the state constitution. *Saunders v. Kohnke*, 108 Louisiana, 838; *Hunter v. Pittsburg*, 207 U. S. 161.

Memorandum opinion by direction of the court. By  
MR. JUSTICE HOLMES.

This is a petition to have an act of the Louisiana legislature (1908, No. 270), and ordinances of the respondent Board declared unconstitutional as impairing the obligation of a contract between the property tax payers and the City of New Orleans. The statute makes it the duty of the Board to require all inhabited premises in the City to be connected with the mains of the public water system 'and to take therefrom at least such water supply as shall be used on said premises for drinking and domestic purposes, exclusive of sewerage, at rates to be fixed.' The contract supposed is that the water for drinking and domestic purposes should be free. The constitution of the State, Art. 232, forbids taxation above a limit, which has been reached, except for permanent public improvements by vote of the property tax payers in the place concerned. In this case the tax payers petitioned the City to levy a special tax of two mills per annum for forty-three years for the acquisition of a system of water works and purification of the water and for the construction 'of a free sewerage system, with free water therefor.' The proposition was adopted by special election, ordinance, statute and con-



stitutional amendment, and this adoption is relied upon as making a contract to the above effect. Under the rules of the Board 1,000 gallons per quarter are allowed free, for flushing closets, but rates are fixed and charged for water otherwise used. These charges were held to be consistent with the actual contract, if any, by the Supreme Court of the State.

The argument for the plaintiffs in error is that as all water that goes into the sewers is sewerage after it gets there, the arrangement required that all such water should be free. But the character of the water that is to be free is determined before it reaches the sewer. It is water 'therefor'—that is for a free sewerage system; or, in other words, water that is discharged into the sewers for the purpose of ensuring the working of a free sewerage system. According to the finding of the Supreme Court the allowance for that purpose is liberal. The original statute of August 18, 1899, that was ratified by the Constitutional Amendment itself, provided that the Board should "have power to fix the rates to be charged private consumers of water, and to collect the same from all persons who use water (except for sewerage purposes only), from the public water supply of the City of New Orleans" &c. § 21. Obviously drinking or bathing water is not used for sewerage purposes, although it goes into the sewer after it has served its end, whereas water used for flushing closets does go into the sewer for sewerage purposes, simply to make them work. The Act of 1908 goes no farther than that of 1899, and there is no ground for invoking the jurisdiction of this court.

*Writ dismissed.*